8 Years Criminal Digest

1931—1938

AND

A SUPPLEMENT

TO THE

UP-TO-DATE CRIMINAL REFERENCE (4th Ed.)

BY

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SUPPLEMENT

TO THE

UP-TO-DATE CRIMINAL REFERENCE

Containing Complete Digest of Criminal Case-laws

FROM

1931 to 1938

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——th s sec authorises the arrest without warrant of a person concerned in a cognizable offence or a person who is a proclaimed offender 1936 Pat 249 37 Cr L J 318 1936 Cr C 273 38 Bom L R 971

——resistance to a constable in effecting an arrest or escape from his custody constitutes no offence when authority is proved to be wanting 1932 Pat 172 13 Pat L. T 135 138 I C 844 1932 Cr C 347 33 Cr L J 706 I R 1932 Pat 190 47 M 442, *fol*

——for an arrest under s 54 (7) two things are necessary (1) knowledge of the pol ceman who effects or attempts to effect the arrest and (2) at the time the police takes action there must be a warrant wh ch has been issued under the Extradition Act 1933 Cr C 304 1933 Lah 159 1925 Cal 278 *Approved*

S 55 Arrest of Vagabonds etc

——the pol ce acting under this sec is not bound to g ve the persons arrested the optior of bail 63 C. 189 37 Cr L J 1070

S 56 Arrest by subordinate Police officer

——in a requ sition under s 56 it is sufficient to specify that sec. only and the name of the officer mak ng the arrest need not be endorsed on the requis t on 1934 All 879 35 Cr L J 1452 1934 Cr C 1085

S 59 Arrest by private persons

——th s sec does not apply to a case where the act done is no offence, and it does not justify seizing and tying up of a person to be handed over to the pol ce 38 C W N 854 59 C L J 482 1934 Cal 610 35 Cr L J 1367 1934 Cr C 908

——s 59 only entitles a p vate pe on ... in his view commits a non b ... in his view mean in ... not 'in h s opin on 19 ... L T 464

S 59 Arrest by private persons—*contd*

——the owner of a house is justified to pursue and to use all means to securing a person who enters his house with the intention of carrying out his intrigue with a married woman 1935 Pesh 83 36 Cr L J 1135

——under the Chota Nagpur Rural Police Act 1914 a village Choukidar is a Police Officer entitled to receive into custody a person arrested under s 59 Cr P C 1932 Pat 214 13 Pat L T 321 1932 Cr P C 495 33 Cr L J 572 138 I C 95

——a sharp distinction must be drawn between sec 42 and s 59 1937 Sind 254

S 68 Form of summons

——summons not in the form prescribed by s 68 may be disregarded 1934 Oudh 370 35 Cr L J 1161

S 70 Service when person not found

——If a person to be served is not found by the process server the latter must resort to the procedure laid down in ss 70 and 71 Cr P C and not to sec 134 (2) 39 C W N 141 60 C L J 474 1935 Cal 251 1935 Cr C 333

S 75 Form of warrant of arrest

——signing of warrant by a Magistrate other than the Magistrate who took cognisance of the offence is valid provided he comes within the term presiding officer 1932 Pat 175 1932 Cr C 351 13 Pat L T 167

S 79 Warrant directed to Police officer

——this sec only requires the name to be endorsed and not also the designation of the constable deputed to execute the warrant 1932 Pat 171 13 Pat L T 135 1932 Cr C 347 138 I C 844 33 Cr L J 706 I R 1932 Pat 190 3 P L J 493 *Ref*

S 80 Notification of substance of warrant

——this sec does not require the fact of the notification to be mentioned in the report The accused is only to know on what charge he was being arrested and where he was to appear 1932 Pat 171 I R 1932 Pat 190 138 I C 844 13 Pat L T 135 33 Cr L J 706 3 P L J 493 *Ref*

S 87 Proclamation for person absconding

——the failure to give necessary notice under s 87 is only an irregularity which can be cured by s 537 1934 Lah 987 1934 Cr C 1391

——when date of publication is not specified only record of se of process under ss 87 and 88 is not sufficient to apply s 87 (3) Pat 249 37 Cr [illegible]

S 88 Attachment of property of absconder

——attachment of absconder s property under s 88 ceases by subsequent attachment under s 386. *1934 Pat 181* 35 *Cr L J* 68- 1934 *Cr C* 370 Sp B

S 89 Restoration of attached property

——the only way of getting release of property from attachment under s. 88 is by proceed ng under s 89 however illegal or irregular the order of attachment may be 1934 *Lah* 987 1934 *Cr C* 1391

——*before property could be released the suspected person must* prove that he d d not abscond and that he had no notice of proclamat on 38 Cr L J 99

S 91 Power to take bond for appearance

——th s sec does not authorise the Magistrate to go to the house of the accused and demand execution of bond for appearance 18 N L. J 320

——where a bond is executed undertaking to appear on a particular day and the date is subsequently exter ded it is not to be forfeited for tl e failure of the accused to appear on such adjourned date 56 B 220 1932 Bom 290 34 Bom L R 584 33 Cr L J 628 I R 1932 Bom 386 138 I C 512

S 94 Summons to produce document or other thing

——the jurisd ction
or thi g carries with
1935 S nd 13 36 Cr L
1187 Sp B but the r
39 Bom L R 1187 Sp B

——ss. 9 and 257 are not antagonistic but interdependent and the Court can call for production of document at any stage at the request of the accused *Above case*

——though in terms s. 94 applies to a person who is absent still the Court has inherent jurisd ction to call upon a person present in *Court room to produce a document* 159 I C 524 1935 A *Cr C* 261

——the Court has power to order not only the complainant but also his solicitor or attorney to produce documents belonging to his client though he has a lien on the documents for his costs but they must be returned to the solicitor 62 C 1037 39 C W N 917

——the Court s d scretion must be exercised judicially There is nothing to prevent an order being made for the production of a thing in anticipation of an order to be made under s 517 at the conclusion of the trial 58 B 152 1934 Bom 74 35 Cr L J 1028 1934 Cr C 706

——the Magistrate can refuse in a trial under s 34 C P Excise *Act to allow the production of departmental enqu ry papers asked for by* the accused 1936 Nag 250 1936 Cr C 1042

S 94 Summons to produce document or other thing—contd

——s 94 (3) does not exempt Banker s books from production before the police 17 Lah 593 38 P L R 1042.

S 96 When search warrant may be issued

——the first two clauses of this section relate to sec 94 but cl 3 apparently does not and is independent 1934 Bom 104 35 Cr L J 1024 1934 Cr C 364

——the Court should act with care in issuing the search of the premises of a merchant in a case of alleged infringement of trade mark *1935 S nd 107 36 Cr L J 908 1935 Cr C 525*

——when a C I D Inspector conducts an invest gation and not an inqu ry the issue of search warrant in general terms is illegal 1937 Rang 206 38 Cr L J 983

S 99 A Forfeiture of publication and issue of search warrant

——to apply th s sec two things are necessary, (1) promotions of feel ngs of enm ty or hatred and that (2) between different classes of subjects It cannot be la d down as a general proposition that transla tion should be permissible when the or ginals are not proscribed 1936 All 561 37 Cr L J 943 1936 Cr C 739 **Sp B**

——the scope of s 99 A is wider than that of sec 153 A I P C because "intent on" falls short of attempt and has in addition been made an alternat ve ground 1936 All 314 1936 Cr C 480 37 Cr L J 599 **Sp B**

S 99 B Application to H C to set aside forfeiture

——the language of sec 99 B clearly indicates that it is the appl cant who has to make out a case consequently he has the right to open the case and the r ght of reply 1936 All 314 1936 Cr C 480 37 Cr L J 599 **Sp B**

S 100 Search for persons wrongfully confined

——the words so confined means believed to be so confined under that sec —duty of police officer 1936 All 306 37 Cr L J 548 1936 Cr C 93

S 103 Search to be made in presence of witnesses

——the provisions of this sec are enacted for greater certainty and security and not because the statements of certain officer cannot be accepted 1936 Rang 15 37 Cr L J 331 1936 Cr C. 21

——the gist of this sec is that there must be respectable search w tnesses The emphas s is on the word responsible ' and not on the word local ty Where the respectab lity of the witnesses was not challanged the fact that they belonged to different locality is only an irregularity not justifying the accused to resist the search 1932 *Pat* 66 13 Pat L T 62 33 Cr L J 233

S 103 Search to be made in presence of witnesses—*contd*

[illegible] permitted to attend to the public officer [illegible] n offence under s 332 [illegible] L J 530

——search list—different items should be proved severally and ought to be numbered separately and consecutively 62 C. 572 39 C W N 368 1935 Cal 184 36 Cr L J 808 1935 Cr C 241

——the prosecution must invariably produce the search list and the search witnesses though it can prove the recovery of incriminating article by other evidences as well 1932 All 185 I R 1932 All 634 140 I C 246 33 Cr L J 943 1932 A L J 104 1932 Cr C 201 *Contra below*

——the search witnesses need not ordinarily be called The statute does not lay it upon the prosecution to explain why it does not call the search witnesses 13 Pat L T 702 11 Pat 807 9 C W N 437 *Diss*

——a person who has been twice convicted once for forgery and once for robbery is not a suitable search witness 1935 All 520 36 Cr L J 551 1935 Cr C 544

——any person is respectable provided he is not disreputable in any way that is if he is not a thief or a criminal of some kind or a person of grossly immoral character 1936 All 707 37 Cr L J 1108 1936 Cr C 893

——where respectable persons can be found in the neighbourhood inference will be against the searching officer if he takes with him persons whose respectability is questionable or who come from a distant locality 1934 All 374

——where it was not possible to obtain search witness except a physician whom searching officer took with him the irregularity did not bar conviction if the Court was satisfied that smugged article was found in the possession of the accused 1934 All 873 1934 Cr C 1082

——a punchnama is not evidence of the accuracy of the evi[illegible] arch in company [illegible] desires to use the [illegible] 1932 Bom 181 [illegible] C 868 34 Bom L R 267

——this sec does not apply to a search under s 6 of the Bombay Act IV of 1887 The fact that the panchas were not local people is an irregularity curable by s 537 of the Cr P C 1932 Bom 610 139 I C 281 I R 1932 Bom 484 33 Cr L J 733 1932 Cr C 868

S 106 Security for keeping the peace on conviction

——the principle underlying the words "an offence punishable under s 149 is that where a person is made constructively liable

S 106 Security for keeping the peace on conviction— *contd*

for an offence by calling in the aid of the provisions of sec 149 it is not proper to take action against him under s 106 Cr P C 1934 Oudh 279 35 Cr L J 1159 Distinguished in 1938 Oudh 95

——absence of finding as to apprehension of breach of peace in future does not vitiate the order if the court believes that it is necessary to protect the complainant against similar incidents 1935 All 627 36 Cr L J 1260 1935 Cr C 641

——breach of peace does not necessarily mean breach of public peace *1933 All 609 1933 Cr C 981 144 I C 954*

——when the accused commits an offence under s 324 I P C it obviously involves a breach of the peace, and the M need not record a formal finding to that effect 1932 Lah 435 139 I C 127 13 Lah I R 1932 Lah 435 33 Cr L J 746 1932 Cr C 581

——when the offence does not come under sec 106 the M is to record a clear finding of facts making the sec applicable I R 1932 336 S nd 98 139 I C 130 1932 Sind 86 1932 Cr C 383

[illegible] ceded [illegible] de Chap VIII s

S 107 Security for keeping the peace in other cases Scope and applicability

——to apply sec 107 it must be proved that a person is likely to do a wrongful act that may occasion breach of the peace The doers of a rightful act such as threatening to throw the debtors in prison causing tension likely to lead to a breach of the peace cannot be placed on security 33 Cr L J 915 33 P L R 935 140 I C 91 I R 1932 *Lah 684 When a person does a lawful act in lawful manner the fact* that it injures the susceptibility of persons of different faith is not sufficient to warrant proceedings under sec 107 1932 Lah 101 1932 Cr C 121

——where it is difficult to say which of the parties to the dispute is creating [illegible] o ng what he is legally e [illegible] an under s 144 would be [illegible] 35 Cr C 1170

—— [illegible] he occasion of Id uj zu [illegible] feelings of the non mus [illegible] a wrong [illegible] act wi [illegible] this sec 39 P L R 179 1937 Lah 717

——if a person believing to be entitled to get possession to take peaceful possession order under s 107 is not proper 1934 179 35 Cr L J 800 1934 Cr C 575 an elaborate [illegible] the ownership and title is entirely out of place 10 N L J 264

S 107 Security for keeping the peace in other cases Scope and applicability—*contd*

——mere proof of violence by persons in the past is not sufficient to *justify order under sec 107* It is to be proved that they are likely to break the peace in future 1938 Mad 213, 1937 Mad 356 *Rel on*

Jurisdiction

——this sec makes no reference to the residence of the perso proceeded aga nst even a stay for a day would justify proceed ngs *within the local limits of* the Magistrate 1934 Mad 255 35 Cr L J 626 1934 Cr C 475

C Off h d n on to n t ate proceed

Magistrate 41 C W N 1091 1937 Cal 520 66 C L J 177 38 Cr L J 1078

——whe i two proceedings u ider sec 107 are started by the Sub d vis onal Magistrate of Ulubaria and they are then transferred to the Deputy M of Howrah the latter M can draw up fresh proceed ngs against a number of other men also on the strength of the same pol ce report 1932 Cal 864 59 C 1484 33 Cr L J 858 36 C W N 796 139 I C 850

——t cannot be said that a person ' is *within the local lim ts of* the Magistrate s jurisdict on s mply because he is present in Court when the M draws up his order u ider s 112 having appeared in obedience to a summons issued by M 1932 All 162 54 A 341 33 Cr L J 230 1932 A L J 211

Procedure

——the foundation of jurisd ction under sec 107 is credible informat on from a police officer or a private person The police cannot make a preliminary investigat on with regard to a proceeding under th s Chap 1932 Bom 196 34 Bom L R 258 1932 Cr C 300 33 Cr L J 797

——the Court cannot take possession of the *property under s 107* 1934 Nag 142 35 Cr L J 991

Revision and appeal

——a find ng that there was apprehension of a breach of the peace is not open to be challenged in revision 1934 Oudh 179 35 Cr L J 809 1934 Cr C 575 and the d scretion of the District Magistrate should not be interfered with as powers have been conferred on him by statute to ensure the peace of his district 1934 Pat 463 1934 Cr C 1059

S 107. Revision and appeal—*contd*

——a person against whom an order under s 107 has been passed is a "convicted" person and the appellate Court can consider the validity of the order 1932 All 680 1932 A L J 624 33 Cr L J 731 139 I. C 141

When possession is given by Civil Court

——it is the duty of the criminal Court to respect, maintain and preserve possession given by the Civil Court 1934 Pat. 565 1934 Cr C 1218.

Limitation in suit for malicious prosecution

——accused being discharged and appeal being dismissed, suit for malicious prosecution instituted within one year from the order of appeal but more than one year after the order of discharge is maintainable 1938 All 49 1930 All 326 *Expld*

S. 108 Security from persons disseminating seditions Scope and application of the sec

——s 108 contains a prevention and not a preventive provision of law 1932 Lah 559 33 Cr L J 831 I R 1932 Lah 606 139 I C 696 1932 Cr C 713 33 P L R 911 Speech not included in the complaint cannot be relied on by the Magistrate, and the amount of the bond shall not be excessive *The same case*

——the words 'disseminates or attempts to disseminate" do not refer to the number of acts performed a single act is sufficient if there is probability of repetition 1932 Pat 213 1932 Cr C. 494 33 Cr L J 711 139 I C 88

——the provisions of s 108 (a) cannot properly be applied in respect of an isolated speech made on a special occasion for a special purpose 1934 Oudh 70 35 Cr L J 562 1934 Cr C 236

Jurisdiction

——it is not necessary that the person proceeded against must be physically present within the jurisdiction at the time of preliminary order 19 N L J. 183

S 109 Security from vagrants and suspected persons. Scope and application of the sec

——to apply s 109 (a) it is not necessary to show that the person has followed a continuous course of conduct in taking precautions to conceal his presence 1934 Oudh 367 35 Cr L J 1272 1934 Cr C 1058

——"concealing his presence if refers to continuous concealment or to an isolated act Satisfactory account is not limited solely to conduct of the accused generally apart from the circumstances which he was arrested 42 C. W N 588 (22 C. W. N 163, 57 949 34 C W N. 15

S. 109 Security from vagrants and suspected persons Scope and application of the sec —*contd*

——simply avoiding police or using unfrequented routes or not giving an explanation, is no ground for taking action under s 109 Meaning of the terms "satisfactory account of himself" 1935 Pat 60 1935 Cr C 139 36 Cr L L J 846

——giving false name and trying to escape does not bring the case within the sec 1936 Oudh 383 37 Cr L J 888

——beggar's son posed as Maharaj ostentatiously with the object of cheating another by representing that he could enable him to make a rich marriage and secure loans on low rates of interest held that the concealment of identity as a beggar was not part of criminal objective and the case did not come under s 109 (a) 56 A 314 1934 All 45 35 Cr L J 442 1934 Cr C 101

Procedure

——s 109 merely requires a M to issue a notice and does not empower him to pass final order which is done under sec 118 which in its turn is dependent upon the order passed under s 112 1936 Nag 265 1936 Cr C 1138

——the definition of inquiry includes proceedings under the security secs where a person arrested [illegible] claim the money in his pos[illegible] that it belongs to any one [illegible] and to be treated as unclai[illegible] 1936 Nag 143 1936 Cr C 694

——a breach of the surety bond is committed when the accused commits or attempts to commit or abets any offence punishable with imprisonment and not when there may be grounds for fresh proceedings 1932 All 58 54 A 335 1932 A L J 112 1932 Cr C 110

S 110 Security from habitual offender

Scope and application of the sec

——in a case arising out of security proceedings the Court should consider the interest not only of the prosecution but also of *the accused* 1934 All 735 1934 Cr C 936 but it is essentially a question which concerns the Magistrate and the local police 61 C 588 1934 Cal 482 35 Cr L J 952 1934 Cr C 690

——an order under s 110 can not be correctly called as a conviction so as to bring an offender within the ambit of sec 75 I P C 1934 Sind 195 1934 Cr C 1405

——this sec is obviously not intended for use against merely undisciplined people such as local bases and faction leaders It is intended to protect the public against irresponsible criminal maniacs and desparadoes 1938 Mad 35

——if the dacoits have been living with B, his son A cannot be held to be guilty of harbouring them 1934 Lah 62 35 Cr L J 658 1934 Cr C 139

S 110 Security from habitual offender—*contd.*

——a person who threatens an assessor in a conspiracy case lays himself open to proceedings under s 110 1935 All 638 36 Cr. L J 1142 1935 Cr C 643

Jurisdiction

——the person proceeded against under this sec need not reside within tl 17 Lah 453 165 I C

—— issioner's Court does not 136 I C 753 *1932 Cr*

Joint trial-irregularity

——where several persons have been improperly tried together, it is not enough to vitiate the proceeding in the absence of proof of any prejudice 61 C 588 1934 Cal 482 35 Cr L J 952 1934 Cr C 690

——a joint enquiry under s 117 (5) is out of question when one charge at least is that two persons are so desparate and dangerous as to render their being at large without security hazardous 1938 Mad 35 (1923 All 35 1925 Mad 189 27 Cal 781) *Rel on*

Procedure

——in proceedings under s 110 neither the prosecution nor the ns Judge the order held to be

ntly tried

th jointly *4 Ref* *ome of his* witnesses and to examine them only 1934 All 735 1934 Cr C 936

Evidence

——evidence of bad repute without solid foundation for the op n on is admissible under s 117 (4) 1936 Oudh 238 37 Cr L J 390 *1936 Cr C* 385

——s 117 (4) is an exception to the general rule of evidence and should be sparingly used and only in exceptional circumstances 1938 Mad 35

——value of the e dence of police officials 1935 All 8 36 Cr L J 1362

——the dec witnesses a party 1935 Cr C 1020

S 110 Evidence—*contd*

——when a person is discharged from a dacoity case the evidence being regarded as unreliable and insufficient, proceedings under s 110 is not justified on the same evidence 61 C 588 1934 Cal 482 1934 Cr C 690 35 Cr L J 952

Proof of previous conviction

——previous conviction need not be proved in the same formal manner as that required by ss 310 and 311 1936 Oudh 238 37 Cr L J 390 1936 Cr C 385

Surety

——a M cannot reject the sureties merely on the report of the police without inquiry 1935 Pat 421 1935 Cr C 1064 36 Cr L J 1473

——the Magistrate is vested with the authority either to accept or reject sureties and the S J cannot under s 123 accept or reject them he can send the proceedings back to the Magistrate with his decisions 61 C 588 1934 Cal 482 35 Cr L J 952

When the High Court will interfere

——the power to demand security from suspected persons is a power that is almost as much of an executive as of a judicial nature so the H C will interfere in revision only in case of miscarriage of justice 61 C 588 1934 Cal 482 1934 Cr C 690 35 Cr L J 952

S 112 Order to show cause

——M proceeding under Chap VIII can call for a report from the police before issuing a notice under s 112 1932 All 670 I R 1932 All 668 140 I C 536 1932 A L J 880 1932 Cr C 822

——the discretion to issue notice under s 112 in pursuance of information received is absolute and uncontrolled by any condition [illegible] 322

[illegible] out a further [illegible] A M L J 57 [illegible] the information 1937 M W N 885

——after the order under s 112 has been drawn up and communicated to the accused the Court cannot alter the period for which the accused should be of good behaviour 140 I C 170 I R 1932 Sind 182

——under s 123 (3) Sessions Judge has no jurisdiction to direct a Magistrate to pass a fresh order under s 112 and to try the case *de novo* 1932 Sind 88 26 S L R 200 1932 Cr C 528

S 117 Inquiry as to truth of information

——the sec does not contemplate *registered* bond from a surety hypothecating immovable property 1932 All 122 I R 1932 All 113 136 I C. 65 33 Cr L J 229

S 117 Inquiry as to truth of information—*contd*

——where there is evidence that the accused were associated together in a conspiracy in the commission of various acts of robbery, house breaking and theft they may all be tried jointly 12 Pat L T 880 3 P L T 538 *Ref*

——consent to furnish security may amount to plea of guilty 1937 O W N 133 38 Cr L J 302 1937 Oudh 289

——the evidence cannot be treated as the evidence of general repute unless the witness can disclose the name of the person from whom he has derived knowledge about it 1934 All 735 1934 Cr C 936

——construction and scope of s 117 (4) 1937 M W W 1065

S 118 Order to give security

——s 118 applies equally to an order to give security for keeping the peace under s 107 and for maintaining good behaviour under ss 108 109 and 110 1932 All 122 33 Cr L J 229 I R 1932 All 113 1932 Cr C 147 1932 A L J 157

——an order under this sec does not amount to a conviction for an offence 1934 Cal 808 59 C L J 410 1934 Cr C 1278

——an order under s 118 is not suspended during the time spent on bail *a fortiori* it will not be suspended during the time spent in prison if suspect be not on bail 1937 Sind 26 38 Cr L J 363

——order for security against a suspected person who is undergoing imprisonment for substantive offence commences from the date of expiration of the sentence 1937 Sind 203 204

——an order under s 118 is a judgment and it must show that the Court has considered the evidence against each of the suspected persons individually 1937 Sind 26 38 Cr L J 363

S 119 Discharge of person informed against

——when it has been found that no binding order is necessary the proper course is to discharge the person concerned the use of the term acquitted is quite inappropriate 1938 All 49

S 121 Contents of bond

——a breach of the surety bond is committed when the accused commits or attempts to commit or abets any offence punishable with imprisonment and not when there may be grounds for fresh proceedings 54 A. 335 1932 All 58 I R 1932 All 197 1932 A L J 112 1932 Cr C 110.

S 122 Power to reject sureties

——a M cannot reject a surety merely on the report of the police 1935 Pat 421 1935 Cr C 1064 36 Cr L J 1473 1935 All 517 36 Cr L J 1285 1935 Cr C 543

——there is procedure to be followed in rejecting surety but the M may accept surety without any inquiry or examination of witness 41 C W N 415 1937 Cal 733 38 Cr L J 655

S 123 Imprisonment in default of security.

—— [illegible] released on bail pending appeal [illegible] which he is to be detained in jail [illegible] *ontra* 1936 Sind 125 37 Cr. L [illegible]

——a Judge hearing a reference under s 123 has no jurisdiction to decide who are fit persons to give the security demanded 41 C. W N 415 1937 Cal 233

——when the suspected person is in prison at the time of order under s 118 the proper order to be passed is that the period of security shall commence from the date of expiration of the date of imprisonment 1937 Sind 204

——the order of the Session Judge is the order in operation overriding the order of the Magistrate 1937 Sind 203 31 S L. R 409

——under s 123 (3) the Sessions Judge has no jurisdiction to direct a Magistrate to pass a fresh order under s 112 to try the case *de novo*. 1932 Sind 88 26 S L R 200 33 Cr L J 898.

S. 133 Conditional order for removal of nuisance Scope of the section

——this sec is not intended for the removal of longstanding obstructions but for obstructions lately built on public places 1935 Lah. 28 1935 Cr C 19

——this sec does not apply to a nuisance on a private land 1935 All 926 1935 Cr C 1140

——this sec does not apply to something which may become a nuisance, that is, to a potential nuisance, but applies only where the nuisance is in existence, 1935 All 926 1935 Cr C 1140, 1934 Nag 230 35 Cr L J 1414, 63 Cr. L J 5 1936 Cal 692, nor does the sec apply where the nuisance has ceased to exist 1936 Pat 577 37 Cr L J 1159 1936 Cr. C 948.

——but when an order under sec 142 directing removal of nuisance has been complied with a subsequent final order under sec 137 is not incompetent. 1936 Cal. 692 63 C. L J 5 1936 Cr. C. 954

——this sec. does not govern cases where an imminent breach of the peace is apprehended 1937 Lah 101.

——generally it is inexpedient for a Magistrate to take action in the case of a noxious trade or occupation for these matters are left to [illegible]

Procedure.

——an order absolute cannot be passed without taking evidence adduced by party against whom it is passed. 1936 Pat 577 37 Cr L. J. 1159 1936 Cr. C. 948.

S. 133 Procedure—*contd.*

——it is doubtful whether a M. can continue two proceedings side by side with regard to practically the same subject matter. 1936 Pat. 577 17 Cr L. J 1159 1936 Cr. C. 948

——procedure to be observed by the Magistrate, effect of omission to observe proper procedure. 1936 Pat. 039. 38 Cr. L. J. 29 1936 Cr. C 1070.

——a conditional order under s 133 does not amount to injunction 1938 Nag. 84

——where a latrine is a nuisance, the owner should be directed to remove the nuisance and to prevent the use of the latrine rather than to demolish the building. 1935 All 926 1935 Cr C 1140

Evidence

——when the evidence adduced by the party complained against is *prima facie* sufficient, it is unnecessary for the Magistrate to take further evidence 1935 Pat 218 36 Cr. L. J 1051 1935 Cr C 581

——where the M has inspected the locality the necessity of examining witnesses is greatly obviated but the inspection should be conducted under sec 535-B Cr P C 1934 All 325 1934 Cr C 409

——the person complaining must prove public pathway User of pathway only for 2½ years does not make it a public path. 1934 Pat 438 1934 Cr C 948

Public nuisance.

——where the noise of the mill caused great discomfort to the residents of the locality there was public nuisance 1934 Nag 193 1934 Cr C 892

Disobedience to final order

——the validity of a final order cannot be questioned at the trial under s 188 I. P C for disobedience of the order 60 C 1336 1934 Cal 242 35 Cr L J 718 1934 Cr. C 364.

S 134 Service of notification of order

——it is only if an order cannot be served in the manner provided for service of summons that the publication of the proclamation under sec 134 (2) can be resorted to 39 C. W N 141 60 C L. J 474 1935 Cal. 251

S. 135 Person ordered to obey or show cause or claim jury.

——even after the Magistrate has decided on enquiry und s. 139-A, that there is no evidence in support of the denial of the existence of the public way, it is still open to the party to elect to have the matter tried by the jury under s 135 56 C L. J 249

S 137 Procedure where he appears to show cause

——a cond tional order cannot be made absolute merely on the personal op nion or on tl e local nspection of the M without giving the party opportunity to offer ev dence 1935 Lah 28 1935 Cr C 19 1934 Pat 316 35 Cr L J 1020 1934 Cr C 737

——ss 133 137 and 142 taken together mean that the M insp te of making an order under s 142 intends to proceed with the case and makes a final order under s 137 63 C L J 5 1936 Cal 692 1936 Cr C 954

——wl ere the M found that there was no rel able evidence in support of the denial of the publ c path he was bound to proceed under s 137 and should not stay the proceed ng because of a civil su t 1934 All 131 35 Cr L J 1445 1934 Cr C 189

——an order under s 137 passed without mak ng an inquiry enjo ned by s 139 A (1) is illegal and cannot stand 1936 Pat 360 37 Cr L J 846 1936 Cr C 560

——an order under s 137 (3) s not l ke an order under s 144 which spends itself in 60 days An order under s 137 which is not good by reason of the nuisance l av ng already abated should not be allowed to remain in force but should be set as de by the appellate Court 1936 *Pat 577 37 Cr L J 1159 1936 Cr C 948*

S 139 A Procedure where public right is denied

——the la v has been altered by the introduct on of s 139 A Now it is to be seen whetl er the den al of the publ c right is supported by any rel able evidence If it s the Magistrate has to stay l is l ands until it has been decided by the Civil Court at the instance of the party asserting such right 38 C W N 391 59 C L J 290 61 C 390 35 Cr L J 1374 1934 Cal 545

——the M cannot make the order absolute without find ng eitl er that publ c right existed or that tl ere was no evidence in support of the den al of the right 1935 Pat 138 36 Cr L J 588 1935 Cr C 335 1937 Lah 676

—— reliable evidence means the ev dence on wh ch reliance can be placed and not the evidence establ sh ng the absence of the r ght 1936 All 356 37 Cr L J 543 1936 Cr C 420 1936 All 142 37 Cr L J 365 1936 Cr C 140 1936 A L J 1285 1936 A W R 1058

——where tl e M f nds that there is quest on of t tle involved and there is reliable evidence of title of the accused he should stay the proceed ng 1932 Oudh 120 I R 1932 Oudh 204 136 I C 839 33 Cr L J 384 1932 Oudh 118 I R 1932 Oudh 380 139 I C 737 1932 Cr C 191

——but where there is no rel able ev dence n support of the denial of the existence of publ c r ght the fact that a c vil su t has been subsequently inst tuted is no bar to his cont nu ng the proceedings under s 138 56 C L J 249

S 139 A Procedure where public right is denied—*contd*

——the Magistrate must exercise his discretion under s 139 A judicially Where the M applied the wrong test to the evidence the proper course was to stay the proceedings till the public right was adjudicated upon by a competent Civil Court 1932 All 360 I R 1932 All 443 1932 Cr C 441 138 I C 556 33 Cr L J 618

——the Magistrate mentioned in the sec must be the Magistrate before whom a person is ordered to appear under the last sentence of sec 133 (1) 39 P L R 484 1937 Lah 676

S 141 Procedure on failure to appoint jury or to return verdict

——where the jury cannot return verdict within time fixed for reasons beyond the control of the applicant he should be heard but if he himself be obstructive no notice should be given to him before confirmation of the provisional order 36 Cr L J 1472 1935 A L J 1089

S 142 Injunction pending inquiry

——an order under s 142 can be passed only if an injury or danger specified in sec 133 is apprehended and not otherwise 1937 Lah 101

——ss 133 137 and 142 taken together clearly mean that the Magistrate inspite of making an order under s 142 is entitled to proceed with the case and make a final order under s 137 63 C L J 5 1936 Cal 692 1936 Cr C 954

S 143 Magistrate may prohibit repetition of nuisance

——this sec gives the M summary powers to issue an order against a person who is repeating or continuing a public nuisance 1935 Pat 305 1934 Cr C 728 there can be no order against a person who was not a party to original proceeding under s 133 152 I C 739 41 C W N 638 and no order can be passed under this sec without drawing up proceeding taking evidence and giving the party affected opportunity to substantiate his case 38 C W N 1070

S 144 Power to issue order in urgent cases of nuisance etc

Sub sec (1) Scope and jurisdiction

——an order under this sec can only be justified by apprehension of risk to human life or safety The question of injury to property as distinguished from danger to human life occupying the property has got very little relevancy 38 C W N 388 35 Cr L J 1252 1934 Cal 513

——in case of dispute as to possession of land the proceeding should be under s 145 and not s 144 1935 Pat 224 36 Cr L J 655 1935 Cr C 618

——this sec confers no power to pass a mandatory order to some act such an order is illegal and disobedience of the same is

S 144 Sub sec (1) Scope and jurisdiction—*contd*

an offence under s 188 A prosecution for such an offence can only be started on a complaint by the M under s 195 Cr P C 39 C W N 1053 61 C L J 579 1933 Cal 724

——but the sec empowers the M to direct a person to take certa n order with certain property in possession and thus direct a person to cut a *bund* which he has erected 41 C W N 897 65 C L J 460 1937 Cal 406

——the power of the M extends to the passing of an order restraining ind viduals from doing acts perfectly lawful in themselves thus prohib ting a man from holding a hat on h s own land 1935 Pat 461 36 Cr L J 1268 1935 Cr C 1170

——a M cannot d rect a person to absta n from resid ng in any place where he is at the time the order is passed 1934 Rang 124 35 Cr L J 1300 1934 Cr C 717

556 1934 Cal 393 35 Cr L J 881 1934 Cr C 534

——an order under s 144 cannot be interfered with if it was a proper method of deal ng w th the emergency merely because s 145 would have been more appropriate 1934 Pat 308 35 Cr L J 1009 1934 Cr C 729 The Magistrate to whom the pol ce made the report is the sole and the best Judge of emergency 1934 Oudh 87 35 Cr L J 472 1934 Cr C 257

——the Dt M may rescind an order under s 144 of a sub divisional M and the H C will not interfere 1934 Pat 313 1934 Cr C 734

——it cannot be said as a general rule that order under s 144 cannot be passed without taking evidence 37 Cr L J 95

——the sec does not contemplate a conditional order to be made absolute later on An order for injunction must be absolute and definite, the other party is to rescind the order by recourse to sub secs 4 and 5 40 C W N 640 63 C L J 137 1936 Cal 259 37 Cr L J 696

——where order under s 144 not to join unlawful p ckett ng etc was passed and the accused was charged with disobedience of the above order under s 188 I P C by clos ng his own shop and exhort ng his neighbours to close the r shops held that the accused was not gu lty of the offence 1932 M W N 1073

——the authority of a M under s 144 should be exerc sed in defence of r ghts rather than in their suppress on The proprietor of an old hat in Be gal has no monopoly or privilege wh ch is entitled to protection and no immunity from competition and no order should

S 144 Sub-sec (1) Scope and jurisdiction—*contd*

be passed preventing the starting of a new hat. 1933 Cal 348 34 Cr. L J 334

——in passing an order under this sec the M. should not go beyond the necessities of the case. 1933 Pat 185 1933 Cr C 516

——all injunctions should be clear and definite Where the order was ambiguous the party should not be prosecuted for disobeying such an indefinite order in the nature of perpetual injunction 36 C W N. 248 1932 Cal 288 33 Cr L J 518 1932 Cr C 214

Civil Court decision should not be interfered with

——the M cannot assume the function of the Civil Court 1935 Pat 145 36 Cr L J 474 1935 Cr C 366

——it is the duty of the Criminal Court to maintain and preserve the possession given by the Civil Court 1934 Pat 565 1934 Cr C 1218

——a M should not act under s 144 so as to usurp the functions of the Civil Court and determine the right of the parties An absolute prohibition of all processions in all streets at all times is *prima facie* unreasonable 62 M L J 392 33 Cr L J 605 1932 Cr C 280

——in a criminal trial it was for the Court to determine the question of guilt of the accused upon evidence before it and the judgments in the civil litigation even though *inter partes* containing the finding that the possession was with the accused were not final 59 C 136 33 Cr L J 441 1932 Cal 293 1932 Cr C 262

Service of order

——if an order under s 144 cannot be served in the manner provided for service of summons then and then only proclamation under s 134 (2) can be resorted to 60 C L J 474 39 C W N 141 1935 Cal 251 1935 Cr C 333

Sub sec (2)

——an *exparte* order may be made in cases of emergency or in cases where the circumstances do not admit of service of notice in due time 38 C W N 556 1934 Cal 393 1934 Cr C 534 35 Cr L J 881

Sub sec (3)

——directing the public in general to abstain from attending a [illegible]

dealt with in sub sec (1) but refers to the manner of promulgation of that order 17 Lah 515, 27 I. C 670 *Rel on*

——before a notice containing an order not to hold a *ha*[illegible] at or near a particular place is issued there must be a proper determinati[illegible]

S 144. Sub sec (3)—*contd*

of the question as regards the limits within which the order is to be operative 38 C W N 556 1934 Cal 393 1934 Cr C. 534 35 Cr L J 881

—— particular place in this sub-sec should be construed to mean a well defined area 1935 Lah 679 1935 Cr C 1041 36 Cr L J 951 1934 Bom 375 1934 Cr C 1212, the term should be clear 36 Bom L R 1129

——in an order relating to taking out procession reference to custo- order indefinite

adopted is not a privilege which

is entitled to protection or immunity from competition 1933 Cal 348 34 Cr L J 334 1933 Cr C 420, 14 Pat L T 740 1934 Pat 104 35 Cr. L J 1057

Sub sec (4)

——the wide powers of rescission or alteration are necessary for the protection of the liberty of the subject and should be construed strictly 1936 M W N 1089

——the jurisdiction conferred by this sub sec is neither appellate nor revisional but a special one The superior M cannot make new order 1937 M W N 210 1937 Mad 487 The omission to apply under this sec does not bar a revision to the H C 1932 Mad 720 33 Cr L J 826 63 M L J. 594

——when an order under s 144 is passed against a person the proper procedure is to apply under sub sec (4) to the Dt M, only in exceptional cases the H C may entertain a revision 37 C W N 962

——a District Magistrate is not rendered powerless to interfere with

71 M L J 701, 1937 Mad 311 1937 M. W N 50

Sub-sec. (5)

——scope of sub clause (5) 38 C W N 556 1934 Cal 393 1934 Cr C 534 35 Cr L J 881

Sub sec (6)

——the period of two months begins to run from the date on which the order is issued 1935 Pat 224 36 Cr L J 655 1935 Cr C 618

—— an order under s 144 will not be interfered with in revision by the H C after the expiry of 60 days unless party is seriously prejudiced 1935 Pat 224 36 Cr. L. J 655 1935 Cr C 618, 1935 Lah 679 36 Cr L J 951 1935 Cr C 1041 the party aggrieved has his remedy in Civil Court 1934 Oudh 87 35 Cr. L J 472 1934 Cr. C. 257

S 144 Sub sec (6)—*contd*

——in passing an order under s 145 the M should not go beyond the necessities of the case and the H C can set aside an order even though it has expired when such order decides upon the rights of the parties not at all necessary for passing the order 1933 Pat 185 34 Cr L J 717

S 145 Procedure where dispute concerning land etc is likely to cause breach of peace

Sub sec (1)—Scope and application

When the sec applies

——a M has jurisdiction to proceed under s 145 when there is dispute and likelihood of breach of the peace. Dispute means actual disagreement between the parties though the question as to the right of possession may have been already decided by the Civil Court or the Revenue Court 1934 Pat 471 1934 Cr C 1064

——the essential preliminary to assume jurisdiction is to decide as a matter of fact whether a dispute of the nature contemplated by the sec exists or not 1937 Mad 494 that is whether a dispute likely to cause a breach of peace and concerning land exists or not 1938 Pat 1 procedure to be adopted by the Magistrate 1932 Mad 368 33 Cr L J 536

——s 145 equally covers the cases of dispossession of tenants by their landlords 1938 Lah 122 39 P. L R 775

——this sec entitles a squatter to the protection of the law unless his possession began within two months of the filing of petition 1937 M W N 732

——the provision of sec 171 Companies Act that when a winding up order has been made no suit or other legal proceeding should be proceeded with or commenced against the company except with the leave of the Court is not meant to override an express enactment in s 145 Cr P C 1933 Cal 433 1933 Cr C 705

Initiation

——the jurisdiction of the M to take action under s 145 Cr P C arises from the fact that he has received certain information and is satisfied as to its truth The juridiction does not depend on how he proceeds Omission to follow certain direction in the Code does not affect jurisdiction 1933 All 264 1933 Cr C 434 I R 1933 All 125 142 I C 537 34 Cr L J 414 F. B.

——proceedings under this sec are *quasi* executive The Legislature has left the term other information elastic No particular way of receiving information is necessary 1934 Nag 194 1934 Cr C 893

——the M can take action under this sec merely on police report if it contains sufficient materials to act upon 1936 Sind 143 37 Cr L J 1030 19 6 Cr C 859

——it is not sufficient to refer to the police report without stating the Magistrate s satisfaction that the report is correct 17 N L J 231

Possession within two months

——in proceedings under s 145 the M is bound to find who was in possession on the date of the preliminary order otherwise the proceedings are without force in law 1932 M W N 72 1931 M W N 1317

——where the opposite party appears to be in possession within two months of the proceedings but is forcibly dispossessed by the petitioner the possession of the former should not be disturbed 37 C W N 652 1933 Cal 424 1933 Cr C 622 34 Cr L J 310

——Magistrates are bound not only to look into events occurring within two months but they should consider the whole history of the dispute from the date when the party was put in possession by the Civil Court 1937 Pat 557 38 Cr L J 1096

Symbolical possession

——the criminal court is bound to support persons placed in possessions of property by the civil court and whose possession has been wrongfully disturbed 1937 Pat 557 38 Cr L J 1096 1933 Pat 586 1933 Cr C 1347

——symbolical possesion delivered by C v l Court breaks the actual possession of the person dispossessed thereby, though what happened at the time of delivery may well be important on the question whether the former continued in possession 37 C W N 652 1933 Cal 424 1933 Cr C 622 34 Cr L J 310

——insp te of delivery of possess on under Or 21 R 35 C P C it is open to the M to hold that physical possession d d not pass and draw up proceeding under s 145 1932 Pat 185 1932 Cr C 418

Possession of servant, trustee and pujari

——a servant cannot set up that possess on by him for his master or superior is his own possession and the master or superior cannot set up that that possession is his own though exercised by him by his servant The same rule appl es as between a trustee and temple pujari 1932 M W N 1079 1933 Mad 245 34 Cr L J 88 1933 Cr C 344 140 I C 900

Joint possession

——where one set of persons claims exclusive possession over the major port on of the land wh le the other set claims to be in joint possession along with them of the ent re land it is in principle no less a quest on of disputed actual possession than if eacl party claimed exclus ve possession of the entire area and s 145 is applicable to such a case 1932 Pat 366 13 Pat L T 609 1932 Cr C 899 4 C W N 426, 1919 Pat. 479 1 P L T 594 *Diss from* 7 C W. N 118 *Dist*

——s 145 does not apply to the claim of jo nt possession unless one party is in actual physical possession of definable and demarcated property 1934 Nag 257 35 Cr L J 1384 1934 Cr C 895 and a

Joint possession—*contd*

finding of the M that both the parties were in joint possession is one of fact and cannot be impugned in revision 1934 Oudh 158 35 Cr L J 1056

——decree of the Civil Court for a fractional share will not be effective against actual possession of the other party 1937 Rang 202 38 Cr L J 202

——this sec does not apply to a dispute relating to an undivided share in land or in produce of land But a bata s share of a zaminder in the produce of the land is not an undivided share and s 145 applies 1936 Sind 143 1936 Cr C 859 37 Cr L J 1030, 1934 Nag 217

——the mere fact that the land is *shamilat* does not preclude the court from making inquiry and taking proceedings under s 145 1936 Lah 1015 1936 Cr C 118

Date of possession.

——the question of possession has to be decided with reference to the date of the preliminary order 1936 Mad 824 37 Cr L J 953 1936 Cr C 948, 1934 A L J 1157

Non-compliance with the procedure effect of

——non compliance with the procedure is not fatal It is curable under s 537 Cr P C 1935 Oudh 316 36 Cr L J 656 1935 Cr C 609 39 P L R 503

(t) and refused to hear more than three witnesses on each side, held that the order was vitiated 1932 M W N 320

——it is not open to the M to say that he cannot decide the question of possession and to remain without making any inquiry into the matter, nor can he after the apprehension of a breach of the peace has ceased, merely drop the proceedings and continue the attachment effected by him or confirm it An order confirming the attachment

proceedings. 1933 Lah. 145 34 Cr L J 616

Sub sec (5)

[illegible] ly

Sub-sec (6)

——it is absurd to require a M while attaching the immovable property to have the movable property removed therefrom and to hand it over to one of the parties 1933 Lah 409 I R 1933 Lah 177 34 Cr L J 542 1933 Cr C 650, 13 Cr L. J 222 *fol*

[illegible]

37 Cr L J 215

——proceedings under s 145 started in respect of certain fields crops reaped under supervision of police and left in the custody of *Panchas* preliminary order made and then proceedings dropped, crops cannot be delivered to any party till the dispute is settled. 17 N L. R 225

——unless there is a preliminary order under sec. 145 (1) the M cannot pass any order under sub-sec (6) The mere fact that the party affected does not object cannot validate the order 1936 Mad 824 1936 Cr. C 948 37 Cr L. J 953

——when a road in dispute is found to be a private road of one party whether an order in form under sec 145 (6) is justified or not 1938 Pat 133

——it is not open to the unsuccessful party to institute successive proceedings he must seek his remedy in Civil Court *63 C L J 7* 1936 Cal 659 1936 Cr. C 881.

——although the mere institution of a declaratory suit in the Civil Court is not sufficient to justify the dropping of a proceeding under sec 145 yet where danger is removed by the Civil Court appointing a receiver, the proper course is to drop the proceeding 1935 Oudh 255 *1935* Cr C. 437 36 Cr L J 464

——order under s 145 (6)—*successful* party deprived of possession by stranger after 3 years-subsequent suit by unsuccessful party when barred 1935 Pat 164 · 14 Pat 424

Award of costs

——in a proceeding under this section the M. has discretion to award costs to the successful party, *where he does* not award costs and gives no reason the H. C. can interfere in revision. 1937 Pat 559 18 Pat. L. T. 714 38 Cr. L. J 1099

Award of costs—*contd*

——as it is extremely difficult to prove the exact amount spe t in a semicrim nal case such as one under s 145 the Court may, in such a case very well use its discretion in awarding the amount which it considers reasonable 1932 All 325 1932 Cr C 294 I R 1932 All 70 135 I C 246 33 Cr L J 157

Sub-sec (9)

——it is entirely with n the d scretion of the M whether he will or will not summon any witness 1936 All 322 1936 Cr C 492 37 Cr L J 694

Interference by H C

——the H C will not interfere with the decision of M on question of facts 1934 Pat 13 35 Cr L J 611

——fi ding of M on point of possess on w ll not be interfered with unless not v tiated by his not keeping in v ew the writ of delivery of possession and the other circumstance of the case The H C may interfere even if the M commits no error of jurisdiction 1938 Pat 105 (1932 Pat 185 1937 Pat 557) *Rel on*

——where the Magistrate ignores the order under Or 21 R 35 C P C of the Civil Court and holds that phys cal possess on did not pass [illegible]

13 Pat [illegible]

report [illegible]

1933 Pat 601 1933 Cr C 1363

S 146 Power to attach subject of dispute

——this sec comes into operation only if a M is unable to satisfy himself as to which of the parties is in possession 1932 All 325 1932 Cr C 294 135 I C 246 I R 1932 All 70

——when there are two joint owners in possession it is a case where the M cannot dec de wl ich of them was in exclusive possession and the M is entitled to pass an order under s 146 1932 All 683 1932 A L J 819 1932 Cr C 938

——th s sec presupposes an inquiry by the M on the evidence recorded Where there is no evidence of any kind on record the order of attachment is without jurisdiction 1936 All 177 37 Cr L J 215 1936 Cr C 211.

——the M may cancel a lease granted by a Receiver when fraud is practised on Court 1932 M W N 1154 140 I C 281 33 Cr L J 956.

——any act done by the receiver appointed under s 146 can affect the rights of the party found by the Court to be entitled to possession of the property Thus a settlement made by the receiver respect of the holding of a raiyat is not bind ng 12 Pat 261 P L T. 113 1933 Pat 224

S 147 Dispute concerning immovable property.

——to justify the initiation of proceedings under this sec. there must be a present dispute and present fear of disturbance of peace and not in future 40 C. W. N. 351 37 Cr L J 251

——held under the circumstances of the case that it is not proper to use official means to enable any party to trespass upon land in the possession of another without deciding his right to do so 1936 All. 759 1936 Cr C 100

... when notice is not issued ... 616

... tements and the subsequent proceedings including the operative order under sec 145 are all substantially covered by sec 147, mentioning of wrong sec viz s 145 does not alter the real character of the proceedings 1936 All 320 37 Cr L J 705

——the subject matter of a proceeding under s 147 may be the ... of fisheries apart from the right to land, in the nature of an ease- ... 1934 Cr C 113 35 Cr L J ... But the right to fish in the sea ... property or be enjoyed as an ... 35 Mad 350 1935 Cr C 447.

——right to draw water from certain wells in dispute—entries in ... 491 ... subject ... down a ... in drain ... he lower ... er s 147 ... the next Patna case

——a dispute concerning the right to drain off surplus water by cutting an *alang* erected by the other party who has a *right of irriga-* ... s 144 and notice issued under ... to notices to be served under ... 78 1936 Cr. C 83 1918 Pat ...

——the words of sub sec (2) contemplate only a prohibitory order, a mandatory order directing one party *to remove a chapra* is not permissible under the section 1934 Cal 556 38 C W N. 476 35 Cr. L J. 1093

S 147. Dispute concerning immovable property—*contd*

——the words 'last of such occasions in the proviso mean the last of such occasions on which the right would have been exercisable. 1934 Pat 557 15 P L T 740

——order under s 147 (2) passed restraining owner of land from interfering with deft s right of way but no mandatory order for removal of fence deft s removal of fence is an act done in due course of law" under s 9 Sp R Act and the plff was to institute a regular suit 39 C W. N 394 1935 Cal 454 61 C L J 307

——when a complaint is dismissed and the M subsequently starts inquiry under s 147, the date of institution of the inquiry is the date when the likelihood of a breach of the peace was brought to the notice of the Magistrate and not the date of dismissal of complaint 1936 Pat 44 37 Cr L J 327 1936 Cr C 69

——it cannot be said that in every case the final order of the M should be in exactly the same words as are used in the section An order directing the removal of an obstruction to the right of the complainant, though not exactly in terms of sec 147 (2) was valid. 1933 Cal 752 1933 Cr C 1254 34 Cr L J 1230

S 148 Local inquiry

——a sub divisional M under the guise of calling for report under sec 148 (1) ought not depute a subordinate M for making investigation and avoid the taking of evidence which the parties wish to adduce 1932 Mad 368 1932 Cr C 324 138 I C 68 1932 M W N 425 I R 1932 Mad 496 33 Cr L J 536

——the question of costs need not be treated as a separate issue, when an order for costs is passed simultaneously with the final order and in the presence of parties no fresh notice is to be given to the other side who may at that time argue against the order If however the judgment is reserved without mentioning anything about costs notice should be given to the party against whom order is made. The costs [illegible]

pleader s [illegible]

——

for costs [illegible]

An order as to costs passed two days after the decision in the case is a valid order 1933 All 264 I R 1933 All 125 142 I C 537 34 Cr L J 414 1933 Cr C 434 1933 A L J 168 F B

——the H C. in revision has power to make an order for the payment of the costs of proceedings under s 145 as an order for costs under sec 148 (3) is incidental to the order for possession within the sec 423 (1) (d) 1933 Rang 288 1933 Cr C 1084 11 Rang 361, F B

——it is not necessary for the H C to go into the question of fact whether there is or is not a likelihood of a breach of peace The M is to decide that question after due inquiry 1934 Nag 112 35 Cr L J 1381, 1932 Nag 134 *Ref*

S. 145 Disputes concerning immovable property

——to justify the initiation of proceedings under this sec. there must be a present dispute and present fear of disturbance of peace [illegible]

——held, under the circumstances of the case that [illegible] in possession of another without [illegible] his right [illegible]

——where proceedings have been instituted under [illegible] Magistrate [illegible] proceedings [illegible] pending [illegible] the written statements under [illegible] in regard to their respective rights [illegible]

——no order can be passed under [illegible]

——the initial notice [illegible] written statements and the subsequent proceedings [illegible]

——[illegible]

——[illegible]

——the right to [illegible] the subject matter of a proceeding under [illegible]

——this sec. does not entitle a [illegible]

——a dispute concerning the right [illegible] surplus water [illegible]

——[illegible]

S 147. Dispute concerning immovable property—*contd.*

——the words 'last of such occasions" in the proviso mean the last of such occasions on which the right would have been exercisable. 1934 Pat 557 15 P. L T. 740

——order under s 147 (2) passed restraining owner of land from interfering with deft's right of way but no mandatory order for removal of fence, deft's removal of fence is an act done "in due course of law" under s. 9 Sp. R. Act and the plff was to institute a regular suit. 39 C. W. N 394 1935 Cal 454 61 C. L J. 307

——when a complaint is dismissed and the M. subsequently starts inquiry under s. 147, the date of institution of the inquiry is the date when the likelihood of a breach of the peace was brought to the notice *of the Magistrate and not the date of dismissal of complaint* 1936 Pat. 44 37 Cr. L. J. 327 : 1936 Cr. C. 69

——it cannot be said that in every case the final order of the M. should be in exactly the same words as are used in the section. An order directing the removal of an obstruction to the right of the complainant, though not exactly in terms of sec. 147 (2), was valid. 1933 Cal 752 1933 Cr C. 1254 34 Cr L J. 1230.

S. 148 Local inquiry.

[illegible] under [illegible] gation [illegible] 1932 [illegible] I. R 1932 Mad 496 33 Cr L J 536

——the question of costs need not be treated as a separate issue; when an order for costs is passed simultaneously with the final order and in the presence of parties no fresh notice is to be given to the other side who may at that time argue against the order. If however the judgment is reserved without mentioning anything about costs notice should be given to the party against whom order is made. [illegible] the decision in the case is a [illegible] All 125 142 I C. 537 : 34 [illegible] L J 168 F B.

[illegible] to make an order for the payment of the costs of proceedings under s 145 as an order for costs under sec. 148 (3) is "incidental" to the order for possession within the sec. 423 (1) (d) 1933 Rang 288 1933 Cr. C. 1084 11 Rang. 361. F B

——it is not necessary for the H C. to go into the question of fact whether there is or is not a likelihood of a breach of peace The M. is to decide that question after due inquiry. 1934 Nag 112 35 Cr. L. J. 1381, 1932 Nag 134 *Ref*

S 147 Dispute concerning immovable property.

——to justify the initiation of proceedings under this sec. there-

759 1936 Cr C. 100

——where proceedings have been instituted under s 107 by a sub-divisional Magistrate, it is open to his successor to direct those proceedings to be kept pending and to order the parties to file written statements under s 147 in regard to their respective rights 1936 Sind 147 37 Cr. L J 1036

when notice is not issued 616

tements and the subsequent r under sec. 145 are all g of wrong sec viz s 145 does not alter the real character of the proceedings 1936 All 320 · 37 Cr L J 705

——the subject-matter of a proceeding under s 147 may be the right of fisheries

ment or *profits a*

481, (23 C 557.

could not form

easement within this sec. 58 M 876 1935 Mad 350 1935 Cr C. 447

——right to draw water from certain wells in dispute—entries in Wajib-ul-arz should be believed 38 Cr. L J 881 39 P L. R 491

——the right to perform puja in a temple can form the subject matter of a proceeding under s 147 1932 M W N. 1079

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Patna case

——a dispute concerning the right to drain off surplus water by

ght of irriga-

issued under

served under

83 1918 Pat.

663 *Rel on.*

——the words of sub-sec. (2) contemplate only a prohibitory order, a mandatory order directing one party to remove *a chapra* is not permissible under the section 1934 Cal 556 38 C W. N. 476 35 Cr. L J 1093

S 147. Dispute concerning immovable property—*contd*

——the words "last of such occasions" in the proviso mean the last of such occasions on which the right would have been exercisable. 1934 Pat. 557. 15 P. L T. 740

——order under s 147 (2) passed restraining owner of land from interfering with deft's right of way but no mandatory order for removal of fence, deft's removal of fence is an act done "in due course of law" under s. 9 Sp R. Act and the plff was to institute a regular suit. 39 C W. N. 394 1935 Cal. 454 61 C L J 307

——when a complaint is dismissed and the M. subsequently starts inquiry under s. 147, the date of institution of the inquiry is the date when the likelihood of a breach of the peace was brought to the notice of the Magistrate and not the date of dismissal of complaint 1936 Pat. 44 37 Cr. L. J. 327 1936 Cr. C. 69.

——it cannot be said that in every case the final order of the M. should be in exactly the same words as are used in the section. An order directing the removal of an obstruction to the right of the complainant, though not exactly in terms of sec. 147 (2), was valid. 1933 Cal 752 1933 Cr C. 1254 34 Cr L J 1230.

S 148 Local inquiry.

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1932 Mad 496 33 Cr L J 536

——the question of costs need not be treated as a separate issue; when an order for costs is passed simultaneously with the final order and in the presence of parties no fresh notice is to be given to the other side who may at that time argue against the order. If however the judgment is reserved without mentioning anything about costs notice should be given to the party against whom order is made. The costs may include any expense incurred in respect of witness's and pleader's fees 37 C W N 852, 37 C W N 849 1934 Cal. 415.

——when the M passes an order after considering an application for costs on merits, the order is valid even though it is passed *exparte*. An order as to costs passed two days after the decision in the case is a valid order. 1933 All 264 I R 1933 All 125 142 I C. 537 · 34 Cr. L. J 414 1933 Cr. C 434 1933 A L. J 188 **F B.**

——the H C. in revision has power to make an order for the payment of the costs of proceedings under s 145 as an order for costs under sec. 148 (3) is "incidental" to the order for possession within the sec. 423 (1) (d) 1933 Rang 288 1933 Cr. C. 1084 11 Rang. **F B**

——it is not necessary for the H C. to go into the question of whether there is or is not a likelihood of a breach of peace The to decide that question after due inquiry. 1934 Nag 112 35 Cr. 1381, 1932 Nag 124 *Ref*

S 154. Information in cognizable cases.

——the section does not necessarily contemplate that only one information should be recorded as first information. All informations given to the police before the investigation is started may amount to first information report. 1935 Pesh 165 1935 Cr C. 1156

——failure on the part of the police to observe the procedure laid down in sec 154 does not make the former statement inadmissible It merely renders it more difficult to prove that it was actually made by the person purporting to have made it 1935 Pesh 165

[illegible]

413 1934 Cr. C 640

——it is very serious to record untrue statements in the first information and it is still more serious to attempt to support them by [illegible]

[illegible]

——the first information report is not a substantive piece of [illegible] of corroboration or contradiction [illegible] 137 I C 79 I R. 1932 Oudh 162, (23 A L J 14, 1930 Mad [illegible] 10 N L J 289 1934 Rang 60 35 Cr L. J 808

——the first information report standing more or less on the same footing as a complaint, the accused is entitled to a copy of it to cross-examine the prosecution witness. 1937 Sind 303

S 155 Information in non-cognizable cases

——the District M. acting under sec 155 (2) Cr. P. C. can order investigation into a case under s. 294 A, I. P. C. 1932 Lah 581. I R 1932 Lah 534 138 I. C. 751 38 Cr L J 678 1932 Cr. C 809

——irregularities in preliminary investigation do not affect the validity of the proceedings 1933 Sind 188 1933 Cr C. 569 141 I. C 879 34 Cr. L. J. 256 I. R. 1933 Sind 79

S 156. Investigation into cognizable offences

——the powers given to the police under sec 156 are not affected when an order to investigate under s 202 is made and though it is not open to the M. to direct the police to make a charge in the same case it is open to the police to do so if they think proper, and even if such a

S 156 Investigation into cognizable offences—*contd*

charge sheet is irregular it is cured by s 529 1932 Lah 570 I R 1932 Lah 561 139 I C 139 33 Cr L J. 737 1932 Cr C 807 1933 Sind 136 27 S L R 67 1933 Cr C 334 1932 Pat 547. *Approved* (1928 Cal 24 1929 Bom 72) *Not fol*

S 159 Power to hold investigation or preliminary inquiry

——the number of investigation is not limited and when one has been completed another may be begun on fresh information 1932 Lah 103 135 I C 202 1932 Cr C 123 33 Cr L J 97, 35 M L J 127 *Rel on*

S 161 Examination of witnesses by police

——statements made during police investigation cannot be used in the same way as the sworn testimony of a witness recorded by the committing Magistrate 1934 Oudh 229 35 Cr L J 843

——the inquest report is not hit at by sec 161 The accused may get its copy and rely thereon to disprove his confessional statements 37 C W N 732 1933 Cal 861

——a headman cannot examine witnesses on oath in the course of an inquiry in a criminal case Statement made to a headman can be used in the manner provided in secs 145 and 157 Evi Act 1933 Rang 119 34 Cr L J 781

S 162 Statement to police, use thereof in evidence

Object of the section

——the object of this sec is to guard against a true case being spoilt by an unscrupulous Investigating Police officer and the Court must conform to those provisions when the Investigating Police officer is allowed to be cross examined by defence 1934 Cal 458 35 Cr. L J 904

——s 162 is designed to keep evidence which is not of a free and fair nature but may have been induced by some form of police duress But merely because certain prosecution witnesses who have been declared hostile and cross examined and questioned as to whether they had not made certain statements to the police and they deny the same it cannot be said that the rule embodied in s 162 is infringed and such procedure does not vitiate the trial 40 C W N 733 37 Cr L J. 1117

Statement made by any person

——this sec is applicable to memorandum of statements also 28 N L R 291, (53 A 458 31 C W. N 940) *Rel on*

——since the amendment of 1928 there is virtually no distinction between a statement under sec 162 and a statement under s 172 1935 Sind 145 36 Cr L J 1161

S. 162 Statement made by any person—*contd.*

——it is immaterial whether the statement was made orally or was reduced to writing or whether *in extenso* or in an abridged form in a

of the sec includes a statement made by a person accused of the offence under investigation. 55 M 903 1932 Mad 391 1932 Cr C. 355 I R 1932 Mad 338 33 Cr L J 418 137 I C 9 1932 Cr C. 355 **F B** 1935 Nag 125 The Full Bench case has been distinguished in 1935 Mad 479 36 Cr L J 1107, *contra* 1933 All 440 34 Cr L J. 875

——a list of stolen property made and handed over to the police in the course of an investigation cannot be admitted in evidence. 1932

To a police officer.

——an Excise Officer is not to be regarded as a police officer for the purpose of sec 162 61 C 967 38 C. W N. 1005 1934 Cal 616 35 Cr L J 1178

In the course of investigation.

——*statements of witnesses embodied in Inquest Report* are governed by this sec. 16 Lah 345 1936 Lah 341 37 Cr L J 504.

——when a statement has not been made in the course of investigating the offence in respect of which the trial is held neither sec 162 nor its proviso applies Hence where departmental inquiry is not held under Chap XIV Cr. P C neither that *sec nor sec. 172 can*

distinguished in 42 C W. N. 620 where it has been held that a statement by a witness in his deposition in Court that he identified the

S 162. In the course of investigation—*contd.*

accused before the investigating Police Officer is not hit by s. 162 and is admissible in evidence [illegible] officer [illegible] hen he [illegible] ries out [illegible] 09 38 Cr. L J. 1067.

——*where in an investigation by Superintendent of Police under* sec. 51 (6), Bombay District Police Act he recorded certain statements and proceedings under s. 107 Cr. P C were started, held that assuming that the applicants for the copies of the statements were "accused" within the meaning of s 162, Chap VIII contained no provision for a preliminary investigation and s 162 did not apply 1932 Bom 196 34 Bom L. R 258 I R 1932 Bom. 521 139 I. C. 628 33 Cr L. J. 797.

——where a girl is kidnapped from Moradabad to Delhi and the Sub-Inspector at Delhi records the statements of the girl, it is not admissible in evidence in a proceeding under s 366 I. P. C. as the S. I has jurisdiction to investigate the case by virtue of sec 156 (1) read with sec. 181 ( ). 1933 All 665 1933 A L J 923 1933 Cr C 1145 34 Cr. L J 1215

——the police investigating a case under the preventive section of the Code are not acting under s 162 56 M. 987 34 Cr L. J. 951 1933 Mad 988.

The statement shall not be signed by the person making it

——if the statement is signed by the maker there is an irregularity, and though it would not by itself be ground sufficient for quashing a conviction yet would impair the value of the evidence 1934 Sind 78 35 Cr L. J. 1170

Use of the statement

——statements may be used under s 145 Evi Act only to *contradict a witness and for this purpose his attention must be drawn* to the statements and the application should be made "when any witness is called for the prosecution" 1934 All 340 1934 Cr. C. 418, 1935 Rang 98 36 Cr. L J 665 1933 Bom. 266 57 Bom 400

——the statement cannot be used otherwise than as provided by the law 1933 Pat 589 1933 Cr. C. 1350 the prosecution cannot use it 1933 Pat 488 34 Cr L. J 892, 56 M 475 1933 Mad 372.

——the proper procedure is to read out that particular of the witness's previous statement made to the police which is in contravention of what he has deposed in court and then to ask whether he sticks to his former statement or to his present and that portion of his statement as recorded by the police

S. 162 Use of the statement—*contd*

been read to the witness should be exhibited 1937 Oudh 201 38 Cr L J 165

——to bring the first proviso into operation (1) the statement of the witness in question must have been reduced into writing (2) the witness must have been called for the prosecution and the written statement must be proved 1937 Bom 60 38 Cr L J 327

——the procedure under s 162 appl es not only where it is desired to contradict the evidence of the witnesses by the statements but also where the witness agrees with the statement 1933 All 535 1933 Cr C 870 55 All 689

——procedure to be adopted by the cross examiner when the witness admits the previous statements and when not 1932 Lah 103 135 I C 209 I R 1932 Lah 81 33 Cr L J 97 1932 Cr C 123

——the accused has no right to insist upon a police witness referring to his diary in order to elicit information which is privileged The contents of the diary are not at the disposal of the defence and cannot be used without conforming to the provisions of ss 162 and 172 Cr P C 1932 Lah 103 I R 1932 Lah. 81 135 I C 209 33 Cr L J 397 1932 Cr C 123

——whether the record of a statement be proved and used under s 162 or used under s 172 (2) without being proved, it is necessary for the Court to avoid using it otherwise than as provided by law 14 Pat L T 543

——statements not reduced to writing made to a police officer during investigation if relevant and privileged under s 123 or s 124 Evi Act can be used at a trial for an offence not under investigation when they were made 1936 Lah 369 1936 Cr C 300, 1932 M W N 1074

——joint statements made by 2 or 3 persons cannot be legally used as statements of any particular prosecution witness 1937 Oudh 201 38 Cr L J 165 36 C W N 106 1932 Cal 375 33 Cr L J 725

——a M cannot use police notes of what the prosecution witness said during investigation to corroborate the evidence of such witness during trial 1936 Pat 581 1936 Cr C 952 33 Cr L J 637, 33 Cr L J 566

——the effect of the contradiction is not to discredit the witness entirely, it may discredit only the portion contradicted 1935 All 935 1935 Cr C 1181

——the procedure under this sec appl es not only where it is desired to contradict the evidence but *also where the witness agrees* with the statement 1933 All 535 55 All 689

——if the statement is not put in under s 162 a presumption arises that such statement does not contradict his evidence 1936 A M L J 50

S. 162 Use of the statement—*contd*

——where the accused after obtaining a copy did not use it in trial, he could not make use of that statement in revision for invoking High Courts' power of revision to interfere with the verdict of the jury. 1936 Pat. 46 37 Cr. L. J 320

Right to copy of statement.

——the accused is entitled, as of right, to obtain a copy not when the witness has been examined but as soon as he is called for the prosecution. 1934 Nag. 138 1934 Cr. C 569

——but the sec does not authorise the granting of copies after the evidence of the witness has closed and there is no use to which such statements can then be put 1934 All 340 1934 Cr. C. 418.

——the sec does not require the Magistrate to satisfy himself that a contradiction exists before granting a copy 1927 Mad. 822

——the Court has no discretion to refuse copy unless proviso (2) applies 1935 Sind 145 36 Cr L J 1487 1935 Cr C 1088 **F B**, 1935 Rang 98, *Approved* and the denial of the accused s right ordinarily constitutes an illegality which cannot be cured because the extent of the prejudice cannot be gauged 1936 Nag. 249 1936 Cr C 1040.

——the Public Prosecutor has the duty to point out to the Court [illegible] sec The Court may [illegible] accused to decide to [illegible] J 1487 1935 Cr C. [illegible] 'esh. 10.

——the cross-examination of the witness should be adjourned until the requisite copy has been supplied and the delay in the trial caused by adjournment can be obviated by having copies of the police statements in readiness or by allowing the defence pleader to see the original statement 1935 Rang 98 36 Cr L J. 665.

——to justify exclusion under the second proviso the two circumstances must exist together in conjunction. 1935 Rang. 98 36 Cr L. J 665 1935 Cr. C. 307

"Reduced to writing"

——a statement to an investigating officer may be said to be "reduced to writing" even when the officer has not recorded the statement in full but has noted merely the gist of what was stated to him. 1933 Pat 589 1933 Cr. C 1350.

If irregularity vitiates the trial

——irregularities regarding supply of copies to the accused d[illegible] vitiate the trial unless the accused can show that it has occa[illegible] failure of justice 1935 Rang 98 36 Cr L. J 665 1935 Cr [illegible] 1935 Sind 145 36 Cr L J 1161, 1932 Lah. 103 1932 Cr. C.

S. 164. Power to record statements and confessions

Scope of the section.

——this sec does not exclude confessions otherwise admissible. It merely deals with the manner in which confessions made during a police ... M 717 1932 Mad 500 I. R. 1932 ... I. C. 504 · 33 Cr. L. J 586.

... confession is a matter of duty and ... The rule which applies is that where a power is given to do a certain thing in a certain way the thing must b... necess... 1221

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meani...
1935 C...

Who can record statements and confessions.

——a Magistrate can only record a confession and a Dt M. can order a subordinate M. to record a confession only when, in the course of police inquiry it is found that a certain person definitely charged with a particular offence is willing to make an incriminating statement. 1935 Oudh 416 36 Cr. L J 927.

——the mere fact that the M. before whom confession was made was only a M of third class power of an Indian State does not make it inadmissible in evidence. The officer before whom the confession is *made is a M within sec. 26 Evi Act and Magistrates of Foreign* nationality are not excluded from the scope of Cr. P. C. 1933 All 286 ...

C. 467 *Rel. on.*

...

1934 Sind 103 35 Cr. L. J. 1328.

——a confession made before a Magistrate of third class of an Indian State is not inadmissible 1933 All 286 34 Cr L J 704

——*an oral confession made before an honorary M. is admissible* under s 26 Evi Act even though it has been recorded according to sec 164 1933 Lah 956.

Statement or confession that may be recorded.

——confession by absconder after recording of evidence was held to be duly recorded as having been in the course of an investigation. 1932

S 164 Statement or confession that may be recorded —*contd*

Lah 103 1932 Cr C 123 33 P L R 891 33 Cr L J 97 135 I C 209 I R 1932 Lah 81 (110 I C 329 37 C 467) *Rel on*

—a confession made by an accused during remand proceedings which however is not recorded in accordance with the provisions of s 164 should be excluded from consideration 33 P L R 25 137 I C 57 33 Cr L J 377 I R 1932 Lah 281

—where a confession is made outside British India all that has to be seen is whether there is anything in the substantive or natural law to vitiate it 1932 Lah 367 I R 1932 Lah 323 127 I C 196 1932 Cr C 485 33 Cr L J 460

Statements recorded are public documents

—statements recorded under s 164 are public documents and the public officer in whose custody those documents are is bound to issue copies thereof 1932 All 327 1932 Cr C 306 33 Cr L J 752 1937 Sind 303

—an accused is entitled to inspect statements of prosecution witnesses recorded under s 164 The prosecution may use the statements for the purpose of corroboration and the defence for the purpose of contradicting such witnesses 1932 All 327 139 I C 330 I R 1932 All 554 33 Cr L J 752 1932 Cr C 306

Forwarding of recorded statement

—the M recording confession should forward it direct to the enquiring or trying M But where the M made it over to the police officer who had brought the prisoner before him and the statement admittedly reached the enquiring M in due course and there was no suggestion that it was tampered with the provision of the sec was substantially complied with 16 Lah 345 1936 Lah 341 36 Cr L J 504 1936 Cr C 264

Mode of recording

—every question asked and answer given must be recorded in full but the M is not bound to put a series of questions and record the answers The confessor must be left to narrate his story as a whole without any unnecessary interference 1932 Lah 180 137 I C 95 I R 1932 Lah 294 33 Cr L J 414

—the M should not ask direct questions as to commission of particular offence 1935 Oudh 416 36 Cr L J 927

—in recording statements under s 164 Cr P C a M is empowered to administer to the deponent an oath or solemn affirmation and the statement so recorded can form the subject of perjury 1933 Lah 321 I R 1933 Lah 303 142 I C 776 34 Cr L J 469

—the word "record" means to write down Where the accused gave a statement written and signed by him to the police and when taken before a M for recording his confession he handed over the same

S 164 Mode of recording—*contd*

written document to the M. saying that it contained his confession, such confession was inadmissible 1933 All 356 1933 Cr C 629 34 Cr L J 576

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Lah 746

nfession within n the matter is 136 I C, 19

——where a confession was made in circumstances that precluded all suspicion of undue influence it should not be rejected merely on some technical ground or because some rules had not been strictly followed 1935 All 653 36 Cr L J 1139 1935 Cr C 653

——when an oral confess on was made voluntarily by tl e accused to the M but it was recorded in accordance with s 164 the confession could be proved by the oral testimony of the M 1934 All 351 1934 Cr C 421

——Where the record of confession does not comply with ss 164 and 364 the defect can be cured by the examination of M who recorded the confess on if he swears that he has followed the procedure correctly 1934 Lah 18 35 Cr L J 1382 36 Cr L J 287 1933 Sind 166 but see 1936 P C 253 37 Cr L J 897 40 C W N 1221 1936 Cr C 752 1936 A L J 895 P C

Custody of accused making confession

——the accused must be free from the pol ce custody both before and after recording of confession 1934 Oudh 151 35 Cr L J 915 1934 Cr C 495

——it is very important that Magistrates should see that persons

suspicion 1936 Lah 278 37 Cr L J 493 1936 Cr C 248, similar case 1933 Oudh 192 34 Cr L J 653

Confession must be voluntary

——it is the duty of the M to satisfy himself that the confession is in fact voluntary and to record the questions and answers which point to such a conclusion 54 A 350 1932 All 228 1932 A. L. J 162 33 Cr L J 201, 1937 Nag 257 where the M does not so question and the confession is retracted before the committing M as having been tutored the Court cannot rely on such a confession 1938 Pat 60

——the first question that ought to strike the Judge is why the accused made the confession 1933 All 31 1933 Cr. C 42 1933 All 31

——in the absence of anything to the contrary it may be assumed *that the warning was given by the M at the appropriate time 1933* Bom 145 1933 Cr C 457 35 Bom L R 234 **F B**

——in the case of a confession duly recorded under s 164 the presumption is that the confession was freely made The burden of shewing that a confession recorded is inadmissible lies on the accused 1932 Sind 201 1932 Cr C 810 26 S L R 307 35 Bom L R 234 1933 Bom 145 1933 Cr C 457 **F B**

——a confession is inadmissible if the M does not question the person making it as to whether he was making it voluntarily 33 P L R 415

——a confession made voluntarily is not inadmissible merely because the accused was not warned by the M that he was not bound to make such confession Sec 164 Cr P C is in canflict with sec 29 of the Evi Act but on a question of the admissibility of a particular piece of evidence s 29 of the Evi Act will prevail 55 M 711 62 M L J 559 1932 M W N 449 33 Cr L J 526 I R 1932 Mad 459 137 I C 863 1932 Cr C 412 1932 Mad 431, 31 A 592 **F B** *Ref*, 1933 Cr C 530 1933 Sind 166

——when the M asks the accused to make a detailed statement' it does not make the statement less voluntary 1937 Lah 399 38 Cr L J 879

Memorandum

——where the question required to be put to the accused is not put and the memorandum required to be made is not made the confession is not admissible 56 B 542 1932 Bom 553 34 Bom L R 1240 140 I C 740 1932 Cr C 785 1933 M W N 723

——where the M recorded a memorandum at the commencement of each confession but did not record the memorandum at the foot as prescribed by the second portion of s 164 (3), the confessions were inadmissible 33 P L R 917 33 Cr L J 847 In the absence of anything to the contrary it may be assumed that the warning was given at the appropriate time 57 B 336 1933 Bom 145 34 Cr L J 555 **F B**

S 164 Memorandum—*contd*

——where oral confessions were made before Magistrates some of whom had no power to record confession at all and the Ms. state that they told the accused that they were Ms. but omit to record the same in memos, the confessions are of little evidentiary value. 1936 Lah 707 37 Cr L J 940 1936 Cr C. 736

——there is no auth

provided by sec 164 (3)

1933 Bom. 145 35 Bom

555 F B

——when a memorandum is made the mere fact that it was attached to the English memorandum of the original vernacular confession, the English memorandum also forming part of this record, is sufficient compliance with the provisions of law 1933 Bom 145 35 Bom L. R. 234 1933 Cr C 457 F B

——ordinarily the written memorandum of the M. is not admissible though the M under the provisions of s 159 Evi. Act can refresh his memory when under examination by referring to the memorandum 14 Lah 290 F B

——where the statement was recorded before the investigation was stated and there was absence of certificate it was not admissible in evidence 1935 Oudh 477 36 Cr L J 1007

Retracted confession

——a retracted confessian does not become inadmissible in evidence merely because the recording M. does not write down the warnings given by him to the accused in the language of the accused nor is it

is examined on all those points 40 C W. N 872 37 Cr. L J 1101, but see the P C ruling under the heading *"Oral evidence of M. if admissible"*

——if there is no corroboration at all or very little independent corroboration or if the corroboration is in such particulars only as do

confession may be relied on 35 Cr. L J 1180, 1937 Rang. 264 38

when it is

16 Lah

specially against the co-accused where its internal indications suggest that the confession was not the outcome of the accused s own desire to state what he knew 1936 All 388 1936 Cr C. 501.

Use of statement or confession as evidence

——a statement made under s 164 Cr P C and admitted under s 157 Evi Act can only be used to corroborate the statement of witness Where it is sought to contradict a witness by such statement and the witness is contradicted the statement cannot be used as substantive evidence against an accused person 1935 Pat 19 36 Cr L J 195

——statement of witness recorded by Magistrate is admissible in evidence to corroborate the statement made by that witness before the committing M from which the witness resiled in the Sessions Court 37 C W N 1066 58 C L J 66

——the recorded statement may be treated as corroborative under sec 157 Evi Act, of the witness's deposition admitted under sec 288 Cr P C 16 Pat L T 730 1936 Pat 11 37 Cr L J 235

——confession made by approvers are not substantive evidence but may be used only for the purpose of contradicting or corroborating their depositions in Court 1937 Cal 433 38 Cr L J 852 **Sp B** 1933 Lah 868 1933 Cr C 1113

——accused's extra judicial confession to a Magistrate is not admissible in evidence and must therefore be wholly excluded 1937 Lah 208 38 Cr L J 583

Interference by H C

——the H C will not give effect to a contention that certain statements by the accused are not admissible in evidence by reason of their not being statements under s 164 when such objection is taken for the first time before it 1936 Cal 101 63 C L J 191 37 Cr L J 445

Oral evidence of Magistrate if admissible

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confessions are to be dealt with by Ms when made during an investigation and to render inadmissible any attempt to deal with them by allowing oral evidence 1936 P C 253 37 Cr L J 897 40 C W N 1221 1936 Cr C 752 1936 A L J 805 38 Bom L R 987 **P C** (1922 Lah 237 1935 All 356 2 C W N 702 17 C 862 56 C 557 1922 Cal 342 9 M 224 3 L B R 17 *Approved* 1933 Lah 716 34 Cr L J 1025 **F B** 1936 Lah 2 1922 Mad 40) *Overruled* 1937 Nag 220 38 Cr L J 642

Legality of Verification proceedings.

— [illegible] undertaken [illegible] view to testing the tr[illegible] the cor[illegible] A ver[illegible] when the M[illegible] himself is examined. Statements made by the accussed to the verifying Magistrate in the course of the proceedings, if they are not recorded in the manner provided in s. 164, are inadmissible 1937 Cal 99 38 Cr L J 818 Sp B

S 165 Search by police-officer.

——a police officer is bound to record in writing the grounds of his belief as to the necessity for searching the house and specifying clearly the article or articles for which the search is to be made 1933 Oudh. 305 34 Cr L. J 568

——unauthorised persons should not be allowed to enter the house when the search is proceeding without their persons being searched 1933 Oudh 305 34 Cr. L J 568

——non compliance with the provisions of the sec, effect of, dissentient opinions 1932 Pat 66, 13 Pat L. T. 62 33 Cr L J 233 1932 Cr C 99 I. R 1932 Pat 60· 10 Pat 821 It is an irregularity but does not vitiate the proceedings 1932 Oudh 249 1932 Cr C. 590 1934 Oudh. 196

——if the police officer was conscientiously acting no inference of dishonesty can be drawn from the fact that he did not comply with s 165 or 166 1934 Oudh 196

——when a company is suspected to have committed offence under ss. 294 and 420 I. P. C the police will be justified to seize all its account books but the officers of the company should be given access to look into such books for their business 1932 Cr. C 809 1932 Lah 581 138 I C. 751 I R. 1932 Lah 534 33 Cr. L. J 678 33 P L R. 824

——as Chapter XIV is controlled by s 5 (2), hence the police has no power to effect searches for offences falling under the Bombay Abkari Act. 1933 Sind 325 1933 Cr. C. 1077 **F B**

S 166 When officer in charge of police station may require another to issue search warrant

——if the police officer was conscientiously acting no inference of disnonesty can be drawn from the fact that he did not comply with ss. 165 and 166 1934 Oudh 196

S 167. Procedure when investigation cannot be completed in twenty four hours.

——an accused cannot be in magisterial and police custody at one and the same time Once powers conferred by the Act by the first part of s 167 (2) have been exercised by a Magistrate and he has taken action under the second part then the powers under the first

S 167 Procedure when investigation cannot be completed in twenty four hours—*contd*

part have been exhausted and cannot be revived and continued by the M to whom the accused is sent under second part 1937 Sind 251

—a M authorising the detention of an accused person in the custody of the police shall record his reasons for doing so 1933 Oudh 315 1933 Cr C 698

S 169 Release of accused person when evidence deficient

—there is no need for investigating officer to take any steps after the accused persons have appeared before the Magistrate 1933 All 582 1933 Cr C 926

—when a person is apprehended with a certain number of accused and is released by the pol ce it is unfair to launch a prosecution against him upon facts disclosed in evidence in the case 1933 All 399 34 Cr L J 761

S 172 Diary of proceedings in investigation

—under s 172 any Crim nal Court can use the police diary to use it in the trial 1936 Rang 75 37 Cr L J 414 It is the Court alone that can use the special diary for what purposes it can use the special diary d scussed 1935 Rang 370 36 Cr L J 1487 **F B** 1933 Pat 440 34 C L J 948

—the accused cannot insist upon a police w tness to refer to his diary 1932 Lah 103 193? Cr C 123

—the court cannot delegate his duties to the counsel for the defence and permit him to have wholesale inspection of the diaries in the first instance I R 1933 Lah 283 142 I C 854 34 Cr L J 464

—whether the record of a statement is proved and used under sec 162 or used under sec 172 (2) without being so proved it is necessary for the court to be astute to avoid using it otherwise than as provided by law 1933 Pat 589 1933 Cr C 1350

S 173 Report of police officer

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S 173 Report of police officer—*contd*

——it cannot be said that a M having once disposed of a police ... and call ... 12 Pat.

... a charge ... any name ...

... oduce along with the challan all the documents to be relied on , an accused person is consequently not entitled, as of right, to insist upon the production of any such document before the case starts 1937 Lah. 411 38 Cr L J 955

S 177 Ordinary place of inquiry and trial.

——s 177 only provides for the ordinary place of inquiry and trial and can be read along with s 531 the result being that a conviction will not be set aside merely on the ground of the trial being held by wrong court unless the accused have been prejudiced thereby 1936 Pat 410 1936 Cr C 642

——the word ordinarily means except where provided otherwise in the Code 1937 Bom 186

——where a conspiracy was entered into in B where the accused lived and some acts of cheating were done in P, held that the court of P could not be clothed with the jurisdiction to try the charge of *conspiracy for cheating 1936 Mad 317 37 Cr. L J 634 1936* Cr C 304

——where the accused made a false report to two police officers one being the Asst S I M who had no jurisdiction to investigate but the other the S I of S who had the accused committed offence though ... Cr L J 862 (17 C 574 F B

... an offence within the Penal ... to try it is determined by the ... 57 M 831 35 Cr L J 962 1934 Mad 423

——the offence under s 5 of the Child M Restraint Act must be ...

Cr L J 631 39 C 487 *Rel on*

——the offence under s 498 I P C is not a continuing offence and can be inquired into and tried only by a court having jurisdiction over the place where the taking or enticing takes place The court of the place where the person taking a woman goes to and lives with her has no jurisdiction 1937 Bom 186 38 Cr L J 769

S 177. Ordinary place of inquiry and trial—*contd*

mbay, goods taken
trial may be at

ocal limits of the
al Children Court
at Calcutta should commit the case to the Session Court at Howrah 59 C 856 33 Cr L J 645 138 I C. 628 I R 1932 Cal 479 1932 Cal 487 1932 Cr C 479 36 C. W. N. 164

S 179 Accused triable in Court where act is done or consequence ensues

——the ordinary grammatical meaning of the word consequence" is a consequence which is necessary ingredient of an offence Loss is not a necessary ingredient of an offence of criminal breach of trust the essence of the offence being misappropriation or conversion or use with the dishonest intention 1937 Sind 68 **F B**, 1930 Bom 490 *fol* 1922 Sind 30 *overruled* Similar case 1934 All 499 35 Cr L J 982 1934 Cr C 596 **F B**, 35 All 29 *overruled* 1934 All 127 35 Cr L J 934

——the offences contemplated in s 179 are those which are not complete till a specified consequence has ensued 1936 Nag 55 37 Cr L J 474

——s 179 does not come into operation in a charge of conspiracy to cheat as conspirators are not charged with the offence of conspiracy by reason of any consequence which has ensued in pursuance of the conspiracy 1933 Sind 333 1933 Cr C 1130

——offence committed outside British India by a foreigner residing in foreign country cannot be tried in British India even in the case of theft when stolen property is found in British India 1933 Sind 333 1933 Cr C 1130

——s 188 overrides s 179 where s 188 is applicable 59 C 1065 1932 Cal 465 1932 Cr C 455 33 Cr L J 267

——place of trial in case of passing of bogus cheque is where the necessary consequence ensues 1933 Oudh 215 34 Cr L J 785

——place of trial for an offence under s 69 (1) (c) of the Provincial Insolvency Act 1933 Nag 33 34 Cr L J 1038

——place of trial for an offence of cheating is where the consequence ensues 1934 All 846 1934 All 499 **F B** *Expld*

S 181 Being a thug or belonging to a gang of dacoits, escape from custody etc

——the combined effect of s 181 (2) and s 222 (2) is that where
everal places
any one of
.8 I. R 1932

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S 181 Being a thug or belonging to a gang of dacoits, escape from custody etc —*contd*

——when offence is committed under second part of s 405 I P C jurisdiction exists at the place where the property was to be delivered by the accused 1936 All 193 37 Cr L J 284 1936 Oudh 329 37 Cr L J 322

——where the failure to account is taken as evidence of intention to misappropriate the offence of misappropriation is deemed to have been committed at the place where the accounts were to be rendered 1934 Cal 392 35 Cr L J 734

——s 181 (2) overrides and is not qualified by s 179 Hence a trial on a charge of criminal misappropriation or breach of trust can only be tried by a Court within the limits of whose jurisdiction any part of the property was received or retained or the offence was committed Accused received money honestly at N but misappropriated at R he was triable either at N or at R 1933 Lah 559 34 Cr L J 902 1933 Cr C 817 1923 Rang 81 *Dist* see also 1937 Lah 85 38 Cr L J 1100 1938 Rang 94

S 182 Place of trial where scene of offence is uncertain etc

——where Cawnpore was one centre of conspiracy and there was correspondence from and to Cawnpore the S J of that place had jurisdiction to try the case 1933 All 498

——the offence of abduction being a continuing one when it is committed in more local areas than one the Court of any such local area may try the case 1933 Oudh 45 34 Cr L J 220

S 188 Liability of British subject for offences committed outside

——s 188 refers to crimes committed beyond the limits of British India and not to an offence committed in British India 1933 All 498 1933 Cr C 833

——s 188 only deals with procedure and it does not make any substantive offence 1935 Bom 437 1935 Cr C 1305

——s 188 overrides s 179 where it applies 36 C W N 456 136 I C 137 59 C 1065 33 Cr L J 267, 1932 Cr C 455 1932 Cal 465 I R 1932 Cal 185

——the object of requiring certificate of the Political Agent or the Local Govt is to prevent the accused being tried over again for the same offence 1934 Sind 96

——a British Vice Consul in foreign territory is not a Political Agent as used in sec 188, this being so the certificate granted by the Local Govt is sufficient 1934 Sind 96 His Britannic Majesty's Minister at Kabul is not a Political Agent 1934 Lah 827

——where the Court is dealing with an act committed outside British India by an Indian subject which would be an offence punishable under the I. P C if it had been committed in British India s 4 I P C

S 188. Liability of British Subject for offences committed outside—*contd*

constitutes the act an offence and it can be dealt with under sec 188 Cr. P C, cases arising under other statutes containing similar provision can be similarly dealt with but not otherwise 1935 Bom 437 1935 Cr C 1305

——dacoity was committed in British India but soon after in an attempt to carry away stolen property murder was committed in a Native State, the British Indian Court had jurisdiction to try an offence under s. 396 without certificate 1933 Lah 977 1933 Cr. C 1467

——where the accused was charged with theft and dishonest retention of a buffalo and was convicted for dishonest retention under sec 411 but the only evidence of retention was retention in French territory, the prosecution was incompetent without a certificate of the Political Agent 1933 Mad 461 34 Cr L J 545 1933 Cr. C 707

——a British Indian Court has no jurisdiction to try an offence committed wholly or partly in a Native State without certificate of the political agent 1935 Mad 326 1935 Cr. C 446

——absence of certificate is curable under s 537 if it has not in fact occasioned a failure of justice 1934 Lah 827

——the opinion of the Political Agent need not be signed by him. It would be sufficient if that opinion is communicated by some one who is only authorised by the Political Agent to do so 1934 Bom 41 35 Cr L J 629

——the certificate under sec 188 does not invest the Dt. M with jurisdiction to order the trial of an European British subject before a Magistrate of the First Class in British India The M can do no more than hold an inquiry and commit him for trial 1936 Nag 152 37 Cr. L J. 979

——for the purposes of criminal jurisdiction conferred by sec 188 an accused person is found wherever he is actually present whether or *not he has been brought there against his will 1936 Nag 152*

S 190. Cognizance of offence by Magistrates

Taking cognizance, what is.

S 190 Taking cognizance, what is—*contd*

——the express on deals with a matter of purely technical nature 1936 Bom 379 1936 Cr C 924

——a M can take cognizance of a case either under sec 190 (1) (a) (b) or (c) or under all the three of them if he is invested with powers there under 1933 Rang 271 34 Cr L J 1185

Cl (a) upon receiving a complaint

— ... Magistrate can be t ... omplainant need not ... 33 Cr L J 733 193 ...

——*where a tampered document was produced before a M in a theft case and it was to the Reg strar, a complaint by the latter aga nst the scribe vendee and attest ng w tnesses of the document was mainta n able* 1935 Nag 190 36 Cr L J 1477

——a report by an investigating Mag strate may be treated as a complaint 13 Pat L T 791

——cogn zance is taken under sec 190 (1) (a) upon receiving a complaint of facts when charges are framed on the ev dence before the tr al court 1933 Pat 297 34 Cr L J 942

——even if by v rtue of the definition in s 4 (h) a pol ce report is not a complaint the M has jurisd ct on to enterta n the same under s 190 (1) (b) in case of a non cogn zable offence 1933 Sind 188 34 Cr L J 256

Cl (b), upon report by any police officer

——the requ rements of th s clause are suffic ently complied with although the facts are not actually written out in the charge sheet but are conta ned in a document annexed to the charge sheet 1937 Pat 160 38 Cr L J 94

——a M can rev se h s order dism ss ng a pol ce report under s 173 and start proceed ngs under s 190 (1) 14 Pat L T 162 1933 Pat 242 34 Cr L J 1198

——an appl cation made by the prosecuting Inspector to put a prosecution w tness on trial as accused is a report in writing by a pol ce off cer 1933 All 399 34 Cr L J 761

Cl (c) Upon information received etc

c rcumstance where that sec is not ava lable is not competent to take cogn zence uncer s 190 (1) (c) 16 Pat 571 1938 Pat 83 1924 Pat 128 *Expld*

s 190 Cl (c), Upon information received etc —contd

——an application under s 144 Cr. P. C was found to be false and the sub divisional M directed applicant to be tried by second officer under s 182 I P C who convicted him, held (1) s 190 (1) (c) was not applicable as s 195 (1) (a) required a complaint to be made by M. to the Dt. M (2) that the order of sub divisional M was not a complaint and (3) that the cognizance by the sub divisional M himself under s 190 (1) (c) was not sufficient in law 1935 Pat. 356 36 Cr L J 904

——when a M himself gains knowledge of an offence from evidence before him he should afford opportunity to the accused to elect to be tried by him or not 1936 Mad 341 59 M 442 37 Cr. L J 501 but the power to frame charge in a warrant case of the offence disclosed is inherent in the jurisdiction assumed by the M upon the original complaint, consequently omission on the part of the M to inform the accused in such a case is not an illegality 1936 Bom 379 1936 Cr C 924

——if a M takes cognizance of an offence under s 190 (1) (c) hi further proceedings are bad unless he informs the accused that he is entitled to have the case tried by another Court 1933 Pat 297 1933 Cr C 789 34 Cr L J 942

——if the evidence discloses other offence it does not become a case under s 190 (1) (c) Once the parties are before the Court the M may deal with the accused for any offence disclosed by the evide No separate complaint is necessary 1933 Pat 297 34 Cr L J 942

——where M takes cognizance on charge sheet filed at his he acts under s 190 (1) (c) and must comply with sec 191 Lah 19

S 191 Transfer or commitment on applicati accused

——failure to comply with provisions of the sec n proceeding 1936 Pat 639 38 Cr L J 29 1934 L Cr L J 1407 1934 All 693 35 Cr L J 1308

——where a new accused is added he is not entitled have the trial by another court under s 191 and the M s 351 1934 Rang 193 35 Cr L J 1312, 1923 Rang

S 192 Transfer of cases by Magistrates

——the expression ' case of which he has taken cog nothing more than judicial investigations into any offe is taken not of individual offenders but of the off Cr P C 1934 Pat 467 1934 Cr C 1062

S. 192 Transfer of cases by Magistrates—*contd.*

——where a M. on receipt of a complaint examined the petitioner on oath and ordered police inquiry and after the receipt of the police report he transferred the case as he was busy otherwise, the M. had taken cognizance of the case and had jurisdiction to transfer it. 1933 All. 264 34 Cr. L J 414 143 Cr C. 434 F. B

——a M. cannot transfer a case outside his jurisdiction 1933 Pat. 643 1933 Cr. C. 1491.

——an application made to a Dt M under s. 144 (4) to rescind an order passed by a subordinate M under s 144 (1) is not a case falling under s 192 or 528 Cr P C. and cannot be transferred. 1936 M. W. N 1089 1937 Mad 167 38 Cr L J. 125

——a transfer of a part-heard case should be made only in circumstances of an exceptional character and it is undesirable to transfer a case which has been completely heard, on the mere ground that the M is overworked 1937 Nag 103 38 Cr L J 719

——the Code does not comtemplate that when one M. has examined witnesses under s 202 and has believed them and thereupon transfers the case for trial to a subordinate M. the latter should have power to examine those same witnesses over again under s 202 and to dismiss the case under s 203 1937 Oudh 81 37 Cr. L. J. 1128.

S 194 Congnizance by H C and information by Advocate General

——an *ex officio* information under this sec should contain a statement of the charge as certain and detailed as an indictment, and only opinion of the executive likely to be very prejudicial to the accused should not be included The H C of Patna has jurisdiction to try persons against whom the Govt Advocate with the previous sanction of the Local Govt has exhibited an exofficio information. 57 C L J 177 I. R 1933 P C. 65 142 I C 335 37 C W. N. 514 · 34 Cr. L. J. 322 1933 M W N 409 1933 Cr C 442 1933 P C. 124 35 Bom. L R 507 P C.

——the procedure prescribed by s. 194 in cases of contempt of court depends upon the exhibition of information exhibited by the Advocate General—summary procedure when to be adopted. 39 C. W. N. 770 1935 Cal 419 Sp B.

——s 194 is not exhaustive of the remedy available where a court and not a particular Judge has been defamed 1935 All 1 1935 Cr. C. 1.

S. 195 Prosecution for contempts of lawful authority of public servants etc.

Sub-sec (1) (a)

——the words "public servant concerned" include his successor in office, 16 Pat 571.

——in making complaint under s. 183 I. P. C. on report of process server the Court should have *regard to the interests of public justice*

S 195 Sub sec (1) (a)—*contd*

rather than to the gratification of private spite 1937 Pat 31 38 Cr. L J 292.

——where the order of the Dt M was ' prosecution under sec 185 I P C is sanctioned, case to S, held that it was not a complaint 1934 Oudh 186 35 Cr L J 789

——where the complainant was in custody of attached property ... 3 352 and 504 I P C was ... igh the facts mentioned in ... 183 or 186 I P C 1935

——where the Dt M granted sanction believing that the Suptd of pol ce would thereby be enabled to prosecute the accused under s 182 I P C, held that there was compla nt for the prosecution of the accused and the conviction under s 182 I P C was sustainable 1932 All 190 33 Cr L J 948 1932 A L J 155 I R 1932 All 633 140 I C 184 1932 Cr C 206

——where the M takes cognizance of charge under s 182 I P C only and protest petition is filed by accused repeating false charge, in the absence of complaint in writing committal and conviction of the accused under s 211 I P C is without jurisdiction 1932 Pat 152 11 Pat 155 I R 1932 Pat 40 135 I C 520 33 Cr L J 153. 12 Pat L T 905

——a conviction under s. 182 is illegal without complaint under s. 195 1934 Oudh 186 35 Cr L J 789

——a communication sent to the Superintendent of Pol ce by a sub-inspector which was forwarded to the M does not amount to a complaint and the trial is illegal 1936 All 788 1936 Cr C 1011

——mere informat on given to the officer in charge of an outpost does not amount to a complaint 1935 Pat 214 36 Cr L J 714 1935 Cr C 577 Sp B

——Tasildar proposing prosecution under s 186 I P C—Sub-d vis onal Officer recommending prosecution under s 183 I P C—communication between the two does not amount to a complaint as required by the sec 1938 Nag 106

——there is nothing to bar a publ c servant from making a complaint when a public servant subordinate to h m has refused to do so 42 C W N 531

——s 144 Cr P. C confers no power on a M to pass a mandatory order directing a party to do some act and hence d sobedience of the same is not an offence under sec 188 I P C 39 C. W N. 1053 61 C L J 579

——there is a r ght of appeal in the case of a complaint made by a Court under s 195 (1) (b) and (c) but no such r ght is given in case of complaint filed under s 195 (1) (a) 57 M 1101 1934 Mad 473

S 195 Sub-sec (1) (a)—*contd.*

——an order by a Dt Judge making a complaint under s 195 (1) (a) after refusal by a Subodinate Judge to do so is an administrative order against which no revis on lies 42 C W N 531.

Sub sec. (1) (b)

——it is the offence and not the offender which is referred to in cl (b) and (c) of sub-sec (1) Therefore a Court is competent to take action aga nst a person who is not a party to the proceed ng if he is connected with the offence by abetting or consp ring 1937 Sind 193 38 Cr L J 1002

——a manager of estate under the Chota Nagpur Encumbered Estate Act deal ng with a claim of a cred tor against the estate is not a Court within the sec 1935 Pat 515 36 Cr L J 1354

——the Collector holding summary invest gation under s 14 of the Bengal Putni Reg is a Court even if he had been acting without jurisdiction 38 C W N 578 61 C 792 35 Cr L J 946 1934 Cal 457

——the word "court means all the members constituting the particular Court 1936 Nag 275 1936 Cr C 1120

——there is notl ing in cl (b) which confines the powers of tl e Court to persons who are parties to proceedings 1936 Rang 369 37 Cr L J 1008

[illegible] jurisd ction to take any [illegible] o inst tute a complaint in [illegible] C committed in a court of [illegible] Cr L J 97

——where tl e accused attempted to fabricate evidence before one M but tl e case was transferred and tried by another M in another court where no such attempt was made the latter M wl o ultimately deals with it is to f le the compla nt 1934 Bom 185 35 Cr L J 848

——the refusal of tl e court to prosecute is final and a pr vate compla nt by a party who is animated by a sense of personal grievance is barred under s 195 (1) (b) Cr P C 1937 M W N 1070 171 I C 943

[illegible]

fact are never stated in such a case s. 195 does not apply and tl e M ca i take cognizance of it without any complaint from a Court 56 B 213 33 Cr L J 386 137 I C 134 1932 Bom 185 1932 Cr C 244 I R 1932 B 219

[illegible]

S 195 Sub sec (1) (b)—*contd*

——where the complaint by private person was for an offence under sec. 193 I P C the necessity of a complaint under sec 476 cannot be dispensed with by the Court electing to try the accused for offences under ss 467 and 109 I P C 55 M 343 136 I C 779 1932 Mad 253 62 M L J 735 I R 1932 Mad 315 33 Cr L J 361

——no sanction or authority of any Court is necessary to the filing

1934 Cr C 1237

——as soon as informant makes a false charge the offence under

1934 Rang 21 35 Cr L J 1259 151 I C 302 11 Rang 155

——where the prosecution for perjury is at the instance of the appellate tribunal the fact that the trial judge felt himself able to accept the statements is a point to be taken into account 1932 All 674 1932 Cr C. 862

the writer and attestors were not parties to the proceedings and therefore cl (c) also did not apply but a complaint might be made against the plff who deposed in the civil Court 1934 Mad 316 57 M 682 35 Cr L J 780

——where from the examination of all facts the only sec appropriate to the case was s 211 I P C and a private complaint under s 211 was maintainable the mere fact that an offence under sec 182 was also disclosed did not bar the inquiry under s 211 59 M 1083 37 Cr L J 1134

S 195. Sub-sec (1) (c)—*contd.*

Sub-sec (3)

——if a Small Cause Court refuses to make a complaint under s 476 Cr P C an appeal lies to the Dt Court under s 195 (3). 1937 Rang 526

——the court of Dt Judge is the only court to which that of the Munsiff is subordinate and an appeal under s 476 B can be heard only by the former 1933 Pat 179 34 Cr L J 410, 1935 All. 416 36 Cr. L. J 1302

——a Dt Munsiff cannot direct a complaint to be filed against a member of the Panchayat court. 1933 M. W N 1423

S 196-A Prosecution for certain classes of criminal conspiracy

——the sec only prohibits entertainment of certain kinds of complaints for conspiracy punishable under s 120-B without sanction but it does not alter the former law, for instance, complaints of the principal offence committed by a conspirator in pursuance of the conspiracy or for abetment by him of any such offence 1934 Sind 4 35 Cr L J 812

——application and scope of the sec—Where the charge under sec 120-B is wrongly laid [illegible] the committal will not be [illegible] when the facts alleged by [illegible] sec. to be applied is s. 109 [illegible] 1937 [illegible] W. N 990

——the provisions of s 196 A are designed to provide a safeguard against the initiation of vexatious prosecution for criminal conspiracies of the kind indicated in the sec and not intended to provide a means of escape for persons who have been convicted on charges brought against them even though those charges relate to the kind of offences indicated in the sec When the consent is obtained subsequent to the initiation of the proceedings and none of the accused is prejudiced the defect is merely technical 62 C. 749 : 1935 Cal 316 36 Cr L. J 982, 1938 Mad 130

——s 196-A deals only with the case of criminal conspiracy and not with abetment of or attempt to commit an offence 1934 Pat 561 · 1934 Cr. C 1215

——where the sanction of Local Govt was obtained subsequent to the institution of the case and fresh complaint having been made the M proceeded to hold a new inquiry under chap XVIII, there was nothing wrong 12 Pat 353 14 Pat. L. T. 281 1933 Pat 273 34 Cr L J. 938

S 196-A Prosecution for certain classes of criminal conspiracy—*contd*

——where the proceeding is *ab initio* void for want of sanction the H C cannot direct the Sessions Judge to hold a fresh inquiry 1933 Pat 273 34 Cr L J 938

——where no objection is taken on the ground of sec 196-A sub-sec (2) at any stage the virdict of the jury and the conviction based thereon cannot be held to be illegal merely because the previous consent of the Local Govt had not been taken 1932 Cal 786 140 I C 723 1932 Cr C. 829

——where the criminal conspiracy is to commit a cognizable offence punishable with imprisonment for a term of more than two years no consent of the Local Govt etc is necessary 1934 All 61 35 Cr L J 1349 1934 Cr C 130 1935 Pat 357 36 Cr L J 856 1935 Cr. C. 987 1935 Pat 91 1935 Cr C 146 36 Cr L J 500

——no previous sanction of the Local Govt is necessary in the case of a conspiracy to commit an offence under sec 50 of the U P Excise Act 1932 All 73 1932 Cr C 93 33 Cr L J 373 I R 1932 All. 270 137 I C 73

——one cannot compel the prosecution to get charges framed which require sanction 1935 Pat 91 36 Cr L J 500

——the words empowered in this behalf by the Local Govt govern both the Chief Presidency Magistrate' and District Magistrate so the Chief Presidency Magistrate has no power to take cognizance of an offence under sec 120 B without being empowered by the Local Govt 1934 Bom 183 58 B 480 35 Cr. L J 1330

S 197 Prosecution of Judges and public servants

——the effect of the amendment is that the scope of protection has been evidenced and the nice question whether the Judge or public servant was accused as such will no longer arise 1935 Pat 52 36 Cr L J 650 1935 Cr C 83

——the questions whether sec 197 applies to a particular case or not has to be decided with reference to the allegation in the complaint 39 C W N 288 1935 Cal 176

——this sec applies only to a selected class of public servants who are not removable from their offices as stated therein A receiver appointed by Court to manage an estate is not a public servant 1934 Bom 306 35 Cr L J 1403

——though the power to appoint a Sub Inspector of Excise is delega ed b [illegible] ssioners yet such a ble from office sav 238 - whom some l authority has by law or rule or order been empowered to remove I case of offences by police constable and a sub Inspector of pol sanction is necessary 1935 Mad 422 36 Cr L J 1241.

S 197 Prosecution of Judges and public servants—*contd*

——a complaint against a M under s. 504 I P C on the ground that he used insulting language to the complainant while in the witness box is maintainable only with the previous sanction of the Local Govt 1934 All 978 1934 Cr C 1302

——where a Municipal Commissioner and an Engineer reported to the Chairman against a contractor, on a complaint by the latter under s. 500 I P C it was held that complaint against the M Commissioner was not maintainable without the Local Govt 's sanction but the Engineer was not protected 1934 Pat 548 1934 Cr C 1193

meaning of 1932 Oudh 308 ad 214 I R 1932 Mad 518 33 Cr L J 557

ns where public servants are called upon to perform and do properly and legally, duties which do not fall strictly and literally within the tasks appertaining to the particular appointment The functions of committee appointed under s 21 (1) of the Bengal Municipal Act are therefore covered by the expression official duty 1934 Cal 838 1934 Cr C 1359 62 C 275 36 Cr L J 385

——where the accused a sub-divisional officer of the P W D went to supervise the work of the complainant and being enraged beat him held or purporting to act 288 1935 Cal 176 of the protection pursuance of his public office although it may be in excess of the duty or an abuse of it When it is different act altogether he is not protected

——even if a Sub Magistrate exceeded his power in the performance of his duty he was protected 1935 Mad 319 1935 Cr C 382

——if the act complained of is so connected with the official duty as to become inseparable from it it falls under s 197 1935 Pat 52 36 Cr L J 650 1935 Cr C 83

——when a public servant commits criminal breaches of trust in respect of Govt money he cannot be said to be acting in the execution of his duties 1935 Rang 263 36 Cr. L J 1272. F B

——status of the accused at the time of commission of the alleged offence is material for the purposes of this sec 1932 Sind 177 1932 Cr C 792

——s 197 protects a person who is a public servant at the time of the alleged incident even if he ceased to be a public servant before the prosecution starts otherwise the protection would be largely illusory 1937 Nag 293

——while exercising the functions referred to in Pat IV of the Chota Nagpur Encumbered Estate Act relating to the settlement of

S 197. Prosecution of Judges and public servants—*contd*

debts, the Manager is a Judge within s. 197 and is protected 1937 Pat. 160 38 Cr. L. J. 94

——when Executive Engineer is alleged to have used insulting words when acting in discharge of his duties he is protected by this sec 1933 Sind 165 : 34 Cr L J 810.

——a Deputy Superintendent of police who is appointed by Local Govt comes within the purview of s 197 (1) 1937 Rang 312 · 38 Cr. L J 945

——the president of a Taluq Board is a public servant, removable only by the Local Govt. 1933 Sind 161 34 Cr. L J 191

——a village munsiff or magistrate is not a public servant within s. 197 1933 M W. N 1031, the members of the District Board are public servants within the meaning of the sec 1932 Oudh 308 1932 Cr. C 848.

——a sanction is not bad because it is not addressed to any particular court or officer, and a sanction accorded to prosecution under specified section of the Penal Code or such other section or sections that may be applicable is not illegal 39 Bom L R. 1056

——there is no provision in this sec. that sanction should be addressed to any particular officer The order of sanction is to be ordinarily conveyed to the authorities who are responsible for initiating prosecution in the locality in question 1933 All. 543 1933 Cr. C

——but this sec does not require previous sanction for taking cognizance of a complaint regarding an offence described in s 168 I P. C. 1932 Nag 133 1932 Cr C. 669 140 I C 711.

——the Commissioner in Sind is not a Local Government. 1932 Sind 177 1932 Cr C. 792

——even if power to remove public servant is delegated to subordinate authority the public servant continues to be removable by the original authority 1936 Lah 781 37 Cr. L. J. 1056

S 198 Prosecution for breach of contract etc.

——

it is for

on the

36 Cr. L

——

Cr. L. J 116

S 199 Prosecution for adultery or enticing
ried woman

——where the father of a girl lodged a complaint under I. P. C alleging that the husband of the girl was ill and it was

S 199 Prosecution for adultery or enticing married woman—*contd*

that the husband was neither ill nor were there any circumstances justifying complaint by father, held that the complaint was in contravention of s 199 Cr P C, and could not be entertained 1933 Cal 144 34 Cr L J 290 1933 Cr C 205 [illegible]

mere irregularity so as to be cured by s 537, 38 C W. N. 113 34 Cr L J 1092 1933 Cal 880

——conviction under s 498 I P C without complaint by the husband cannot be sustained even though the husband had come forward and gave evidence 1933 All 626 1933 A L J 701 34 Cr L J 1227 1933 Cr C 1005 (5 A 233 27 M 61, 29 C. 415) *Rel on* 20 C 483 *not fol* 1937 Bom 186 38 Cr L J 769 1935 Pat 357 36 Cr. L J 856

——the court cannot in the absence of a complaint substitute a [illegible]

husband is necessary, though it need not be express delegation It is not enough that she is under the protection and care of a particular person 1937 Bom 186 38 Cr L J 769

S 200 Examination of complainant

——to lodge a complaint is not to give evidence upon which a court can act The complaint is in the nature of an indictment the averments in the complaint must be established and proved 1934 Cal 604 35 Cr L J 996

——it is unjust to compel a person to stand his trial when the complainant has made no allegation which if proved would constitute a criminal offence 1933 Rang 297 1933 Cr C 1128

——the M should enquire as to the scene of the offence so as to determine jurisdiction 1937 Sind 31 38 Cr L J 291

——examination of the complainant in part is bad but it does not vitiate the proceeding 37 C W N 319 1933 Cal 552 34 Cr L J 1063

——the omission to examine the complainant before the issue of process is an irregularity covered by s 537 (a) 1936 Pat 145 37 Cr L J 289 39 Bom L R 1056

——failure to examine the complainant on the back of the complaint under s 200 is a mere irregularity which is cured by s 537 when

S 200. Examination of complainant—*contd.*

accused is not prejudiced. 1933 All. 816 : 1933 Cr. C. 1415, (1929 Cal. 175, 1920 Pat. 232) *Ref.*

——where a M. has already taken cognizance of an offence under s. 211 I. P. C. on a police complaint but subsequently the opposite party files a protest petition, failure of the M to examine him on oath is only an irregularity. 1934 Pat. 573 . 1934 Cr C 1237.

S. 202 Postponement of issue of process

——the proviso to sub-sec. (1) makes it clear that a M. has no [illegible]

Bom. 161 *Rel. on*

——it is entirely in the discretion of the M. whether or not he would send the case to the police for inquiry and report 1933 Rang. 271 . 34 Cr. L. J. 1185

——the complainant has no right to require the Court to refer the case to the police 1935 Bom 76 36 Cr. L J. 483 59 B 171.

——in enquiries under s 202 the accused has no right to be present. 1934 Rang. 167 1934 Cr C. 784, (14 C. 141, 40 C. 444) *Ref.*

——where a complaint was referred to a M for inquiry and he [illegible]

represented by lawyers. 37 C. W. N 709 1933 Cal. 447 . 57 C. L. J. 259 : 1933 Cal. 447 . 60 C. 1051.

——it is open to the M. taking action under s 202 to give an opportunity to the accused to appear and state what he has to say about the accusation 1934 Sind 143, 1934 Oudh 372 35 Cr. L. J 1239.

——the Dt. M. has no power to order a preliminary inquiry by the sub-divisional M. in a case under s 552. The provisions of sec. 202 do not apply to a case under s. 552. A preliminary inquiry is neither permissible nor desirable in such a case even by the Dt M. himself. 1933 Nag. 374 . 1933 Cr C 1573, 4 Bom. L R 609 *Rel on.*

——a Magistrate's order directing the police to enquire into a cognizable case does not debar the police from exercising their powers of arrest in investigation in regard to the same matter as formed the subject of complaint. 1933 Sind 136 34 Cr. L J 763, (1923 Pat. 547 *Apprd.* (1928 Cal. 24 and 1929 Bom. 72) *not fol* , 1934 Sind 20 . 35 Cr. L J 891.

——admissions made by parties in proceedings under s 202 are relevant provided they are duly proved. 1934 Lah 286

——where there were interdependent cases of adultery and defamation and the Court trying the charge of adultery ordered stay

S 202 Postponement of issue of process—*contd*

of proceed ngs till the decision in the other case, held that the defamation case should have been stayed till the decision of the adultery. 1933 Sind 254 34 Cr L J 89

——an Additional Chief Presidency M is empowered to send a case to another Presidency M. for judicial inquiry and report but the latter cannot issue process 61 C. 467 38 C W N 560 59 C L J 201 1934 Cal 405

——a M making an order under s 202 for a preliminary inqu ry does not deprive himself of jurisdiction and the M to whom a case is sent is to submit his report and cannot issue process, but the situation is entirely different in the case of a transfer under s 192 1934 S d 143 1934 Cr. C 1150.

——the powers given to the police under s 156 are not affected when an order to investigate under s 202 is made and it is open to the police to file charge sheet 1932 Lah 579 I R 1932 Lah 561 139 I C 139 1932 Cr C 807 33 Cr L J 737

——apart from the provisions of s 202 a Magistrate proceeding under Chap VIII Cr P C has the right to call for a report from the pol ce before issu ng a not ce under s 112 1932 All 670 140 I C 536 *I R 1932 All 668 1932 A L J 890 1932 Cr C. 822*

S 203 Dismissal of complaint

——this Act does not apply to an application under the Merchant Shipping Act such an application should be inquired into under the proivisions of the latter Act 37 C W N 1185 1933 Cal 617 58 C L J 116

——dissmisal of a complaint without giving apportunity to the compla nant to be heard is not proper and further inquiry should be ordered. 1933 Sind 395 1933 Cr C 1435

——in dismissing a complaint the M has the right to order the resumption of *Status quo* so that the rights of the part es might be determined in Civil Court 1933 Cal 149 1933 Cr C 226 34 Cr L J 676

——when [illegible]
is issued to [illegible]
Cr P C 15 [illegible]
to sec 436 suc [illegible] without issuing [illegible]
to accused and giving opportunity to him to show cause why further inquiry should not be ordered 1934 All 51 35 Cr L J 418 1934 Cr C 167

——a second complaint of an alleged offence is entertainable and it is not absolutely necessary to get the previous order of dismissal under s 203 set aside 33 P L R 318 137 I C 520 I R 1932 Lah 342 33 Cr L J 493

——on a dismissal of a complaint under s 211 I P C fresh complaint on the same facts under s. 500 I P C is competent 1934

S 203. Dismissal of complaint—*contd*

Rang 40 35 Cr L J 802 and when a complaint under s. 452 and s 500 I P C is dismissed another complaint on the same facts under ss 452 and 453 I P. C by a different complainant is allowable 1934 Lah 435 1934 Cr C. 698

——but though the previous complaint is no bar to the second complaint it is only in exceptional circumstances that the second complaint should be entertained on the same facts Where the previous complaint was dismissed after a due inquiry a fresh complaint on the same facts should not be entertained 1936 Lah 47 37 Cr L J 427

——where the complainant has already been examined on oath under s 200 the M need not examine him again under s 203 1932 Sind 58 I R 1932 Sind 63 136 I C 767 1933 Cr C 199 33 Cr L J 330

——a complainant need not be an eye witness of everything in the complaint 1931 M W N 1316

——it is contrary to the scheme of the Code to permit the opposite party to appear and argue that process should not issue But when the prayer of the complainant is for the seizure of the opposite party s books and accounts the latter may appear immediately and ask that such order be vacated 36 C W N 674 I R 1932 Cal 473 138 I C 639 33 Cr L J 636 1932 Cr C 652 1932 Cal 697

——where a M dismisses a complaint under s 203 the Dt M cannot under s 436 order that the complaint should be restored to file The proper order is to direct further inquiries and the M has unfettered discretion to dismiss the complaint once more if he thinks it proper to do so 1938 Mad 112

——where a M dismissed a complaint under s 203 after making local inquiries but without personally examining the complainant and recording his statement the H C will not interfere in revision merely because there have been technical irregularities 1935 All 883 36 Cr L J 1035 1935 Cr C 1033

——when an order of acquittal is set aside and retrial is ordered in revision the M can retry the accused only for the offence he originally tried for 1932 M W N 1218 I R 1932 Mad 798 139 I C 852 33 Cr L J 825

S 204 Issue of process.

——sec 204 applies not merely when cognizance is taken on a complaint but also when cognizance is taken on a police report, submitted to him after an inquiry under s 202 on the case of a complaint An order for submission of a charge sheet may be executive or judicial order An order passed by a Magistrate empowered under

S 204 Issue of process—*contd*

——where one Magistrate directs the issue of warrant and in his absence another Magistrate signs the warrant, the warrant is valid and legal 1932 Pat 175 13 Pat L T. 167 1932 Cr. C. 351

S 205 Magistrate may dispense with personal attendance

——where a Bench of Ms dispense with the personal attendance of an accused person in the exercise of the discretion under s 205, it is not open to the Sub-Divisional M in revision to cancel the order of the Bench 1937 M W N 182

——when a *pardanashin* lady applies for exemption from attendance it should be considered on its merits before ordering her to appear in person 1937 A M L J 60

——s 342 must be read subject to s 205 where the M exercises the power given to him by s 205 and permits him to appear by pleader the M is not bound to question the accused personally 1934 Bom 212 35 Cr L J 1035 1934 Cr. C 759

S 206 Power to commit for trial.

——an apparent connection of a case under s 326 I. P. C. with a case under s 302 is no ground for committing it to the Sessions Court when the offence is triable and can be sufficiently punished by a First Class M or one exercising powers under s 30 Cr P C 1932 Lah. 168 33 Cr. L J 255

——offences under ss 302 and 307 I P C and s 19 (f) Arms Act committed to Sessions held that though the M could have dealt with the latter charges yet as such a course would have led to unnecessary delay, the M acted rightly 1933 Lah 500 34 Cr L J 314

S 208 Taking of evidence produced

——it seems wholly unnecessary to have full hearings successively in the committing Magistrate's court and again in the Sessions Court This sec does not imply that the M should record all evidences which the complainant or the prosecution may adduce 1933 All 690 145 I. C. 481 1930 Cr C 1202 34 Cr L J 967

——an order of commitment is liable to be quashed if the M has failed to examine the defence witnesses 1934 Lah 610 1934 Cr. C. 942

——the prosecution has no right to produce before the court of Ses[illegible]

orm of a trial
nesses for the
in the dark

S 208 Taking of evidence produced—*contd*

——the prosecution is at liberty to examine witnesses in the Session Court which it has not produced in the Court of Committing Magistrate, but only those witnesses so examined in the committing Magistrate's Court can be bound down to attend in the Sessions Court 1936 Lah 533 37 Cr L J 742

——where there is an application for the production of police diaries under s 208 the M is bound under that sec to take steps for their production unless he thinks it unnecessary to do so 1933 Cal 184 1933 Cr C 230 34 Cr L J 868

——the prosecution should exercise a careful discrimination and avoid the filling up of evidence and the overburdening of record and waste of time 1933 All 690 34 Cr L J 967

——the M is said to commence an inquiry only after the accused is brought before him, when the accused is absconding no inquiry can commence 1932 Lah 103 33 P L R 891 I R 1931 Lah 81 135 I C 209 33 Cr L J 97 1932 Cr C 123

——it is not proper for a M to treat a prosecution witness as an accused person and to record his evidence in jail instead of examining h m in open court or more conveniently at his own house 1933 Oudh 265 34 Cr L J 1009

S 209 When accused person to be discharged

——the function of a M trying a case is different from the function of a M inquiring into a case exclusively triable by the Court of Sessions The committing M is not to weigh the evidence or to give the accused the benefit of doubt if there is sufficient evidence then he should commit the case 1935 All 366 36 Cr L J 1103 But in a Full Bench case [illegible]

the accused can be put on his trial there is no reason why a M cannot discharge the accused when on a consideration of the whole evidence he is of opinion that there is no credible evidence against the accused 59 B 125 1935 Bom 137 36 Cr L J 643

——a M conducting an inquiry ought to weigh the evidence before deciding whether to commit or discharge 1937 Pesh 12 38 Cr L J 427, 1937 M W N 324 38 Cr L J 703

——there is no distinction between orders of d scharge under s 253 and such orders passed under s 209 1933 Bom 158 35 Bom L R 245 1933 Cr C 470 57 B 430 34 Cr L J 564.

——omission by the committing M to examine the accused does not vitiate the commitment or render it illegal 62 C 475 1935 Cal 605 39 C W N 289 36 Cr L J 1340

S 209 When accused person to be discharged—contd

——under sec 209 the M has jurisdiction to decide whether the offence was triable by Sessions Court or by himself When there is nothing to show that the M snatched at any jurisdiction it is a case of an honest difference of opinion on a subject which is always open to doubt and should not be considered abstractly and the accused should not be subjected to a strain of retrial 1937 Lah 217 Cr L J 992

——where there is a charge and counter charge and the Magistrate finds it necessary to commit the accused in one of such cases to sessions it is at the discretion of the Magistrate to commit the counter-case also 1932 M W N 692

——where the Sub Magistrate discharged the accused under s 209 (2) on the ground that the prosecution was incompetent for want of a complaint under s 195 Cr P C, held that as he had no jurisdiction to entertain a complaint he had no jurisdiction to discharge the accused under s 209 and the order being illegal it could not be revised by the Sessions Judge 1933 Mad 413 34 Cr. L. J 800

S 211 List of witnesses for defence

——the accused must be informed of the necessity of giving in the list of witnesses at any time [illegible] in any such list otherwise the [illegible] be complied with 1934 Lah 23

——when an accused does not avail himself of the opportunity afforded to him by the sec he loses his right to do so and when an application is made in the Sessions Court it is within the discretion of the Sessions Jud[illegible] reason such as delay [illegible] or absence of [illegible] 216 1935 Cr [illegible] 250 35 Cr L J 1034

S 213 Order of commitment.

——the Court is entitled to select such evidence as it considers important and sufficient to prove the point for consideration 1933 All 690 145 I C 481 1933 Cr C 1202 34 Cr L J 967

——where the committing M acts under sub sec (2) it cannot be said that he usurped the function of the Sessions Judge. 1933 All 482 34 Cr L J 1201

——where the accused was convicted under sec 20 of the Arms Act and the Sessions Judge set aside the conviction on the ground that the Magistrate had no jurisdiction to try the accused under that sec. with the [illegible] to the Sess[illegible] accused with [illegible] commitment [illegible] 470 I R. [illegible]

S 215 Quashing commitments under s 213 or 478

——it is undesirable that a case which can be adequately dealt with by a M himself should be committed to the Sessions 1932 Lah 263 1933 Cr C 328 33 Cr L J 680

——the Judge of the H C. presiding over the Sessions of the

1598

——a plea that there is no medical evidence on record to prove that the accused committed the offence does not raise any point of law 1936 Sind 3 37 Cr L J 314

——failure t
which a commitm

——the que
which will justify
36 Cr L J 1389

——commitment by the M without weighing the evidence is in accordance with the practice in the Punjab and cannot be interfered in revision 1933 Lah 39 1933 Cr C 119 34 Cr L J 39

——technical grounds and irregularities which can be rectified by Sessions' Judge do not justify the quashing of a commitment 52 I C 428 11 O W N 1308

——the mere fact that the M did not give his reasons for committing the case cannot make the commitment illegal 1934 Lah 326 1934 Cr C 557

——the effect of quashing commitment is that the case should start again from the beginning 1937 Sind 32 38 Cr L J 379

S 217 Bond of complainants and witnesses

——this sec indicates that only those witnesses who appear before the M can be bound down to appear before the Sessions Judge This also shows that witnesses not appearing before the M can appear before the S J the only disadvantage to the prosecution being that they cannot be bound down 1936 Lah 533 37 Cr L J 742 1936 Cr C 568 F B

S 219 Power to summon supplementary witness

——long after commitment prosecution was allowed by committing M to examine new witnesses Thereupon the applied to summon some more witnesses which was allowed by

S. 219. Power to summon supplementary witness—*contd.*

but rejected by the Sessions Judge, held opportunity should be given to the accused to summon and examine witnesses 1933 Pat. 577 · 1933 Cr. C. 1344.

——the M. has discretion to require the complainant as a witness 1935 All 267 36 Cr. L. J. 446 1935 Cr C 267.

——the prosecution is bound to supply the defence free of cost with copies of the statements of witnesses who has not been examined before the committing M. and whom the prosecution proposes to examine for the first time in the Sessions Court 1934 Bom. 487 · 1934 Cr. C. 1413

S. 221 Framing of charges.

——where the accused was charged under s. 292 I. P. C for having published an obscene book the failure to specify the particular passages relied upon by the prosecution as obscene would not vitiate the trial as the prosecution maintained that the whole book was obscene. 36 C. W. N 985 56 C L. J. 123 1932 Cr C 608 1932 Cal 651.

——where the same facts will constitute different offences the indictment may, and ought to, charge each such offence so as to meet every possible view of the case 38 Cr L J, 1037.

——the question of intention or knowledge should never be mentioned in a charge of homicide 1935 Rang. 299.

——it is open to the prosecution to charge abetment generally, and then, if the evidence did not establish abetment other than in one particular form to rely on this particular form for a conviction. The charge will amount to notice to the accused that they have to meet a case of abetment in one or more of the different ways indicated in s 107 I. P. C. 1938 Cal. 125.

——it is not sufficient to charge the accused in the bare words of the sec Particulars sufficient to give notice to the accused of the matter with which he is charged must always be given but its omission is no [illegible] not occasion failure of [illegible] Cr. L. J. 1219

[illegible] . 34 I. P. C. should be [illegible] ble that some reference [illegible] 1935 Rang. 304 : 36 Cr. L. J. 1393.

——in a charge under s 147 I. P. C. it need not include the words "by force or by show of force" because the suggestion of force is [illegible] 1936 Cr. C. 1065

[illegible] charged under s. [illegible] or with abduction [illegible] marry against her [illegible] or seduced to illicit [illegible] r. L. J. 1107.

S. 221. Framing of charges—*contd.*

——where the accused is charged for kidnapping and abduction there should be separate charges. 1933 Cal. 563 · 34 Cr. L. J. 682 : 1933 Cr. C 940.

——under ss. 221 and 222 there is no duty on the prosecution to mention the fellow conspirators by name in a charge under s 121-A I P. C 1933 All. 498 1933 Cr. C. 833

——the enhanced punishment referred to in sub-sec (7) relates to infliction of enhanced punishment as provided by sec. 75 I. P. C. 1933 Nag. 315 : 34 Cr. L. J. 1166.

S. 222. Particulars as to time, place and person

——it is not sufficient merely to charge the accused in the bare words of a section of the Code. Particulars must always be given sufficient to give him notice of the matter with which he is charged But omission of this is not a ground to set aside the conviction if it does not occasion the failure of justice. 37 C. W N. 1074 1933 Cal. 676 34 Cr. L J. 1219

——where there is no proper compliance with the provisions of s. 222 the conviction should be set aside. 1934 Pat. 132 35 Cr. L J 693

——a charge under s. 411 I. P C is defective if it does not specify the particular articles for the possession of which each of the accused persons is being prosecuted, but it is cured by s. 537 Cr. P C. if the [illegible] J. 1206.

[illegible] ne place where [illegible] the omission [illegible] place does not [illegible] 5 Cr. C. 1290. [illegible] dishonest [illegible] of law, [illegible] to do so [illegible] ffences is intended and does not state who made the alleged entrustment or who suffered from the alleged breach of trust, offends against sec 222 (1) Cr. P. C. 63 C. 18 37 Cr L. J. 439.

——a charge of criminal breach of trust under s. 409 I. P. C. the approximate dates between which the accused dishonestly converted to his own use the property in question, must be stated. 1936 Bom. 379 1936 Cr. C. 924

——where the charge contained a certain date as the date on which the offence was committed and the accused pleaded *alibi* but the Court convicted the accused on the footing that he committed the offence on a different date, the conviction was bad 1934 Lah. 455 1934 Cr C 703

——the distinction between a charge of an offence under s. 409 I. P. C. and a charge of conspiracy to commit such an offence is that in

S 222 Particulars as to time, place and person—*contd*

the former case particulars w th certain limits as laid down in the Code [illegible] and the [illegible] ie persons [illegible]

——s 222 (2) has no appl cation to an offence under s 477-A of the Penal Code 1933 Nag 327 34 Cr L J 673 (41 C 722, 26 C 56c) *Ref*

——sub sec (2) was previously enacted to get rid of the tech nical d fficulty in framing the charge so that persons who showed a difficiency in the accounts with wh ch they were entrusted could be convicted of crim nal misappropriatio i even when it could not be shown that they had misappropriated this or that specific sum 1932 Oudh 145 1932 Cr C 222 I R 1932 Oudh 193 33 Cr L J 343

——a charge of criminal breach of trust in respect of items said to have been embezzled durn g the course of more tl an one year, expressly violates the provisions of sec 222 1935 Oudh 241 36 Cr L J 477

S 225 Effect of errors

——where offences which ought to have been separately charged are joined togetl er but the specific offences are satisfactorily proved by competent evidence corroborated in all necessary respects and no miscarriage of just ce is caused the irregularity is cured by ss 225 and 537 1938 P C 130 **P C** appeal from 1936 Cal 753

——where the [illegible] Vehicles Act but the [illegible] the facts and tl e [illegible] the mistake in the [illegible] accused as he knew [illegible] N 246 33 Cr L J 549 1932 Cr C 451 1932 Cal 461 I R 1932 Cal 419

——a conspiracy charge contained that the three accused agreed with each other or with others unknown to commit the offence held that the word "or was not used as a d sjunctive meaning that the charge was the one alternative or the other but it was used merely because the complic ty of other persons was not so certa n as that of the accused the defect if any could be cured by s 537 1938 Cal 193

S 227 Court may alter charge

——the powers of the H C in Sessions trial to alter a charge are very wide and extend to the alteration of charge even if special jury is required in place of common jury 1937 Bom 260 38 Cr L J 850

——until judgment is given or the verd ct of the jury is returned it is open to the Court to alter or add to the charge and the provis ons of ss 228 229 230 and 231 Cr P C apply provided that the accused

S 227. Court may alter charge—*contd*

shall not be embarrassed or prejudiced by the alteration of charge 1937 Sind 1 38 Cr. L J 324

——where the Session Judge alters the charge so as to make it one of an offence different in nature from that set out in the original charge the Court cannot convict the accused without calling on him to answer the charge and without taking the opinion of the assessors 1935 All 458 36 Cr L J 1294 1935 Cr C 486

——an accused person who has been charged with the offence of rape can be convicted of

charge being amended under s

——s 227 read with s 2

has been taken in the Sessions Court 1932 M W N 1102

S 231 Recall of witnesses when charge altered

S 233 Separate charges for distinct offences

——this sec applies to summons cases also 138 I C 317 1932 M W N 1157 33 Cr L J 589 I R 1932 Mad 553 1932 Cr C 501 1932 Mad 497

——kidnapping is an entirely distinct offence from abduction and separate charges should be drawn up if it is desired to charge the accused with both the offences Where the Judge framed a simple charge but dealt in his charge to the jury with the abduction case separately from that of kidnapping there was no prejudice and the trial was not illegal 37 C W N 1071 See also 1934 Pat 170 35 Cr L J 814 which relied on 1927 Cal 644 and 1933 Cal 194 and was distinguished from 1930 Cal 209

——where in a charge kidnapping and abduction are included in the alternative and the case does not come under s 236 the defect is only an irregularity and not an illegality and is cured by s 537 Cr P C 37 C W N 1074 1933 Cal 676 34 Cr L J 1219 1934 Sind 164 1934 Cr C 1266

——failure to comply with s 233 would be condoned where the offences are committed in one transaction where the evidence is identical and where care has been taken to consider each item of charge separately and arrive at a distinct finding regarding each one of the offences charged 1933 Pat 488 34 Cr L J 892 1933 Cr C 1030

——where the accused forged two withdrawal cheques on two different dates and with drew the money from the bank, there were t distinct offences for which two charges ought to have been made 1 Pat 488 34 Cr L J 892

——it is impossible to lay down any universal rule as to wh two or more acts constitute the same transaction but the pri

S 233 Separate charges for distinct offences—*contd.*

criterion wh ch may be said to indicate it are proximity of time, unity or proxim ty of place continu ty of action and commun ty of purpose or design 1934 Oudh 499 35 Cr L J 1496

——a trial of two offences under ss 170 and 175 together is illegal and contrary to ss 233 and 235 Cr P C 1933 Mad 434 34 Cr L J 1183 1933 Cr C 662

——where two persons made a concerted attack on the deceased and one of tl em was conv cted under s 34 although not charged under that sec but he was in no way misled in his defence he was properly convicted 1933 Lah 313 34 Cr L J 724 1933 Cr C 547

——an offence under s 19 (d) of the Arms Act and one under s. 411 I P C are too very d fferent offences and there should be separate trial 1934 Oudh 457 35 Cr L J 1417

——offences under ss 380 and 457 I P C committed on different dates are dist nct offences requ ring separate trial 34 Bom L R 590 1932 Cr C 389 33 Cr L J 619 I R 1932 Bom 383 138 I C 520

——where the accused was charged with having used as genu ne a forged pass [illegible] inter foils there n [illegible] with regard to ea [illegible] 33 Cr L J 685 [illegible] 1932 Cal 390

——where in a case of perjury the charge stated that the accused had stated in h s deposition what they knew or had reason to bel eve to be false the cl arge was held to be defect ve because a man may make statement in the bel ef that it is true though good reasons exist for know ng it to be false 37 C W N 514 142 I C 335 35 Bom L R 507 57 C L J 177 I R 1933 P C 65 1933 P C 124 1933 M W N 409 1933 Cr C 442 P C

——any defect or omission in framing the charge would not be fatal unless it has occasioned a failure of justice 33 Cr L J 373 1932 Cr C 93 I R 1932 All 270 and accord ng to the circumstance of the case 1937 Pat 176 38 Cr L J 97 1934 Oudh 244 35 Cr L J 935

——the illegality w th regard to s 233 does not necessarily v tiate the trial as a whole 1934 Sind 57 35 Cr L J 1337 1934 Cr C 6.8

S 234 Three offences of same kind within one year may be joined

——ss 234 and 235 are cumulative and not mutually exclusive As multiplic ty of trials is to be avoided so the trial of three offences [illegible] s 477 A of each charge is 34 Cr C 461 [illegible] for distinct [illegible] under s 411

S 234 Three offences of same kind within one year may be joined—*contd*

I P C A joint trial of these offences is illegal 1934 Oudh 457 35 Cr L J 1417

——three persons were charged of being in dishonest possession of stolen property, one of them was further charged of being in dishonest possession of some other stolen property in the course of the same month their joint trial and conviction were not illegal as s 239 did not prohibit the application of s 234 1934 All 811 35 Cr L J 1224 1934 Cr C 996

——the complainant should produce papers in his possession to show the duration of time of one year otherwise the inference will be *against him 1934 Pat 132 35 Cr L J 693 1934 Cr C 288*

——six dacoities committed by the accused in one night will not make them form part of one and the same transaction 1934 Oudh 325 35 Cr L J 1048

conformity with s 222 nor in conformity with s 234 and neither s 225 nor s 537 can cure such defect 1935 Oudh 273 36 Cr L J 518

——the trial of two or more charges of criminal breach of trust cannot legally be joined with two or more charges of falsification of accounts 36 C W N 542 1932 Cal 486 55 C L J 111 33 Cr L J 265 I R 1932 Cal 184 136 I C 136 1932 Sind 64 33 Cr L J 650 1932 Cr C 284 1937 Sind 1 38 Cr L J 324

——joinder of more than three distinct offences of criminal breach of trust in one trial vitiates trial 1933 Rang 325 34 Cr L J 1179

——offences under ss 380 and 457 I P C are not offences of the same kind within the meaning of s 234 33 Cr L J 619 I R 1932 Bom 383 138 I C 520 1932 Cr C 389 34 Bom L R 590

——where a person was charged and convicted under s 477 A I P C for having made false entries in ten pay sheets between March 1923 and February 1929 held that the offences of making false entries in each pay sheet was a distinct offence Therefore there was distinct violation of s 234 Cr P C 1932 Cal 377 1932 Cr C 320 137 I C 179 I R 1932 Cal 273 33 Cr L J 357

——offences under ss 393 and 394 I P C cannot be jointly tried 34 Cr L J 402 I R 1933 Lah 275 1933 Cr C 771

S. 235 Trial for more than one offence

——the question of the applicability of s. 235 arises only where

Cr L J 673 1933 Cr. C. 1328, 32 A 219 *Ref.*

——but if both sections 235 and 236 are in terms applicable to a case ... 54 A. 337 1932 ... J. 122. ... must not be cons... case of charge

——under sec 235 (1) there must be one continuous thread of a common purpose running through the acts to support a joinder of charges Mere difference in time or place will not necessarily import want of such continuity They may yet be linked together by a community or continuity of purpose 41 C W. N 1112

——to determine whether there was a series of acts forming part of the same transaction the most important points to be considered are whether there was a common purpose and design and continuity of act on Where black mailing is the common purpose, two exactions on different dates may be jointly tried 56 C. L. J 73

——a mere common purpose does not constitute same transaction and cannot make two distinct offences one under sec 380 and other under sec 57 I. P. C part of the same transaction 1932 Bom 227 33 Cr. L J 619

——where the incidents are so closely connected in point of time that the acts which resulted in the commission of the primary offence and those which resulted in the commission of the offence of destroying evidence of the primary offence form parts of the same transaction, the two offences can be tried together. 1938 All 91 (40 C. L. J. 559 26 Cr. L. J 467) *Dist*

——the word transaction means a group of facts so connected together as to involve certain ideas namely, unity, continuity and connexion Where a clerk sets out to rob his employer, having regard to the fact that under sec 222 (2) he may be charged with having mis-

S. 235 Trial for more than one offence—*contd*

being put an end to or by abandonment. 60 B 148 1936 Bom 154 37 Cr L J. 688

——it is not necessary that of the offences committed in the course

——under s 235 (1) the transaction itself need not be a criminal transaction Offences can be committed in the course of transaction whose aim is perfectly legitimate 1935 Nag. 149 36 Cr. L J 1153 15 Bom 491 *Rel. on*

——the trial of charges together makes the whole trial invalid where offences charged do not form part of the same transaction 1935 Nag 149 36 Cr L J. 1153, 25 M 6 P. C. *Ref.*

1081

Cal. 195

——a charge of general conspiracy can be tried together with charges consisting of overt acts made in pursuance of that conspiracy 41 C W N 251, 1934 Sind 57 35 Cr L J 1337.

——where there is a conspiracy and specific offences are committed in pursuance of such conspiracy persons who are parties to that

S 235 Trial for more than one offence—*contd*

dacoities and
18 occurrences
es in one trial

hich are not
committed in pursuance of the conspiracy are not part of the same transaction with the conspiracy itself 1937 All 714 1937 A L J 1073

——two murders of two distinct persons committed at different times and at different places are not one and the same transaction triable jointly 1934 Oudh 499 35 Cr L J 1496

——when two murders are committed in the course of the same transaction joint trial on the two charges is not illegal 1937 M W N 463

——charges of causing hurt and wrongful confinement and forgery to screen these offences are part of the same transaction 56 B 488 1932 Bom 545 1932 Cr C 777 34 Bom L R 1090

——the trial of three charges of embezzlement and corresponding charges of falsification of accounts together is illegal 1935 Nag 178 36 Cr L J 1216 1931 P 349 *not fol*

——composing the offending article editing and printing it at a certain place and publishing the same at six different places on different occasions cannot be regarded as one series of acts forming the same

744
ale of water
forgery and
B 148 37
Cr L J 688 1936 Bom 154

——where the accused were convicted of offence punishable under ss 147, 323 149 and 325 I P C, held that separate convictions were proper but not the separate sentences as s 35 Cr P C should be read subject to s 71 I P C 1934 Mad 388 57 M 643 35 Cr L J 1226

——simultaneous possession of number of bullocks at a *mela* and the offer of them for sale is one transaction and any number of bullocks stolen from different owners and on different dates may be the subject of a single trial 1934 Pat. 483 1934 Cr C 1074

S 235. Trial for more than one offence—*contd.*

——a previous acquittal is no bar under s 403 (2) Cr. P. C. to a trial for any distinct offence for which separate charge might have been made under s 235 (1) in the former trial 1934 Mad 673 35 Cr. L J. 1503 1934 Cr C 1307

——an offence under s 147 I. P. C has been made a substantive offence and there is no illegality in the accused being charged under that sec in addition to charges under ss 323 and 325 I. P C 1938 Oudh 95 1938 O W N 218.

S 236 Where it is doubtful what offence has been committed

——if both ss. 235 and 236 are in terms applicable to a case there is nothing prohibiting their conjoint operation 54 A 337 33 Cr. L. J. 122 I R 1932 All 49 135 I C. 225 1932 Cr. C 34 1932 A L. J. 113 1932 All 25

——the doubt contemplated by the sec has to be a doubt as to the law applicable to a certain set of facts which have been proved 1936 Rang. 174 37 Cr L J 492, 31 S L R 480 but it was held in a [illegible] that ss 236 and 237 only [illegible] btful and do not apply in [illegible] ind These ss do not say [illegible] s are clear but the law is [illegible]

——before s 236 can be applicable there must be a doubt as to which of several offences would be constituted by the fact which can be proved The doubt contemplated by the sec must arise at the time of the charge Meaning of doubtful ' When the evidence is circumstantial and question of inference arises it is doubtful but when the evidence is direct a doubt as to whether the jury would believe the evidence is not doubt within the meaning of sec. 236 62 C 956 39 C W. N 620.

——the uncertainty contemplated by s 236 and 237 must necessarily be an uncertainty arising out of a postulated sets of facts not an uncertainty regarding the facts which the prosecution may be ultimately able to establish 1938 Cal 51

——where it is doubtful which of several offences a person has [illegible]

——on a charge of cheating in pursuance of a conspiracy th accused may be found guilty of cheating without a conspiracy 60 485 1936 Bom 193 37 Cr L J 753

S 236 Where it is doubtful what offence has been committed—*contd*

. . . . . . he appl cat on of sec. 236 that offences
ay be border line cases
Chapters. A convict on
one under s 341 1937

——the offence of abet nent of forgery is quite different from the offence of using as genu ne a forged document 55 C. L J 336 1932 Cal 545 1932 Cr C 545 140 I C. 544

——where a married woman aged 15 had gone outside her husband s hut at night and had been seized and taken away and raped by the accused and charge under s 366 I P C for kidnapping and abduction was framed the case did not come under s 236 Cr P C 1933 Cal 670 37 C W N 1074 34 Cr L J 1219

——where an accused is charged under s 302 I P. C. only and the charge is not proved he cannot be convicted under s 411 that being an entirely different offence with which the accused is not charged 1933 Oudh 315 1933 Cr C 698

——charge being under s 302 accused cannot be convicted under s. 194 where no reference is made of that in the charge sheet 1933 All 30 34 Cr. L. J 445 1933 Cr C 41.

——where a licensee is guilty of a breach of R. 37 of the Rules under the Electricity Act, 1910 he can be convicted under R. 107 But a conviction in the alternative under R. 107 and s. 47 of the Act is not in accordance with law 1933 Rang 70 34 Cr L J 1040

——it is not correct to hold that there may be an alternative charge
. . . . . . ere the M has
although it is
least serious

S 237. Charged with one offence convicted of another

——s 237 applies only to cases which fall within the provisions of sec 236 and is controlled by it Though an accused may be charged in the alternative judgment cannot be passed in the alternative that is, the accused cannot be convicted of two or more offences in the alternative 62 C 956 39 C W N 620 35 Cr L J 1503 1934 Mad 673 1934 Cr C 1307

——s 237 does not deal w th a case where the ev dence falls short of proving the offence which the prosecution had set out to prove
. . . . s charged

S 237 Charged with one offence convicted of another —*contd*

——where in a trial on a charge of dacoity under s 395 I. P C the evidence of the prosecution, if believed, clearly establishes an offence of dacoity only and not of receiving stolen property, the accused cannot be convicted of the latter offence under s 412 I. P C 39 C. W. N 620 62 C 956

——where several accused were charged under sec 302 read with s 149 I P C but the jury found them guilty of murder substantially under s 302 and the judge accepted the verdict and convicted them under that sec the conviction was not improper 1932 Pat 302 1932 Cr C 774 13 Pat L. T 440

——at the trial on a charge of theft under s 380 I P C against several persons committed by them jointly in the course of the same transaction, the conviction under s 411 I P. C of one of them in whose possession the stolen property is found soon after the theft, is not illegal 62 C. 916 39 C W N 741

——where the accused were charged under ss 302 and 201 I P C the acquittal of the accused in respect of offence under s 302 is no bar to their being convicted under s 201 59 C 1040 1932 Cal 297 138 I C 116 I R 1932 Cal 417 33 Cr L J 546 30 C W N 816 *fol*

——an accused charged with an offence of murder under s 302 may be convicted of an offence under s 201 if it appears in evidence that he committed that offence 1937 M W. N 544 so also a conviction under s 323 can be substituted for one under s 395 I P C 1933 Oudh 162 34 Cr L J 385 but where the accused was charged under s 325 he could not be convicted of the offence of affray under s 160 I P C the conviction was illegal as the accused had not the notice of the several facts which constituted the several ingredients of that offence, the true test being whether the facts charged give the accused notice of the offence for which he is going to be convicted though not charged 1933 Mad 843 1933 Cr C 1520 1934 Sind 89 1934 Cr C 748

——an accused may be convicted under s 411 I P C though he was charged only under s 457 I P C 1932 Nag 173 140 I C 431 1932 Cr C 908

——a person charged for robbery under s 392 can be convicted for cheating under s 420 I P C 152 I R 1036 35 P L. R 595

——an appellate Court is competent under s 423 read with s. 237 (1) Cr P C to alter a conviction under s 408 I P C into one under s 403 I P C 11 O W N 1392 152 I C 463

——charge of theft conviction on appeal for abetment of theft for instigating the accused who were acquitted conviction is illegal 1932 M W N 1216

——but there is no general proposition that where an accuse charged for only substantive offence, a conviction for abetment the

S 237 Charged with one offence convicted of another —*contd*

in illegal This sec may be invoked to support the legality of the conviction 36 C W N 595 59 C. 1192 33 Cr L J 720 139 I C 242 I R 1932 Cal 584 1932 Cal 455 1932 Cr C 335

——where an accused is charged for an offence under s. 366 I P C the H C may convict him for an offence under s 376 I P C though no specific charge of the offence has been made 1932 All 580 1932 A L J 776 1932 Cr C 698

S 238 When offence proved is included in offence chagred

——the offence of grievous hurt is a minor offence when compared with the offence of culpable homicide under s 304 Consequently a Court while acquitting the accused person under s 304 can convict him under s 325 without altering or adding a specific charge 1934 Oudh 251 35 Cr L J 943 1934 Cr C 710

——if a charge is framed of substantive offence the accused may without an addit onal charge being framed be convicted of an attempt to commit the offence or of abetment of that offence 1934 Pat 561 1934 Cr C 1215

——wl ere a conspiracy, with two different objects is alleged it is by no means certa n that a conspiracy with only one of these objects will be a minor offence Each would be a distinct conspiracy by itself involving a distinct agreement as the gist of the offence and not related to the other as princ pal or subsidiary to it Nor can it be said that where an offence is alleged to constitute the object of conspiracy, as charged a conspiracy to commit a minor offence will be a minor offence within sec 238 (2) 1938 Cal 51

S 239 What persons may be charged jointly

Scope and application of the section

——under s 239 a d scretion is given to a Court to try certa n persons eitl er jointly or separately and it must depend upon the facts of each case Even where ss 235 and 239 justify a joinder it should not be resorted to if there is a risk of embarrassment to the defence The H C may set as de tl e conviction w thout directing a re tr al 1936 Cal 753 1936 Cr C 1043 41 C W N 225 • 38 Cr L J 545 1936 Sind 47 37 Cr L J 716 1936 Cr C 319 26 A 238 *fol*

——if persons can properly be charged and tried together under s 239 Cr P C there is nothing to prevent other charges being added against one or more of such persons f the addit on of them is permis sible by the Code 1936 All 337 37 Cr L J 794 1936 Cr C 401

—— n order to dec de whether several persons can be tr ed jo ntly with having committed offer ces forming part of the same transaction the Court has to look to the accusation *i e* the prosecut on case as set forth in the charges The matter must be looked at, as it appeared to

S 239 Scope and application of the section—*contd.*

the M at the time when he framed the charges against the accused before him and not to the state of affairs existing long after the trial has proceeded on its way leading to the conviction of the accused 41 C W N. 225 1936 Cal 753 1936 Cr C 1043 38 Cr L J 545, 62 C. 946 39 C W. N. 741

——what gives the jurisdiction to the M to proceed with the joint trial is the manner in which the case has been adumbrated in the complaint and put before the Court by the prosecution witnesses 1936 Bom 379 1936 Cr. C 924

exception and
sec 239 of the

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ı to call defence
of the prosecu

tion witnesses are also defence witnesses as regards one of the accused then the accused should be tried separately 1937 Rang 512

——two persons accused of an offence ought not to be tried together if the prosecution cases against them are mutually exclusive 1934 Rang 193 35 Cr L J 1312

(a) Same offences committed in the course of same transaction

——a precise definition of the expression the same transaction' connot be formulated and each case must depend on its own facts 35 Bom L R 474 1933 Bom 266 57 B 400 34 Cr L J 870

——identity of time is not an essential element in determining whether certain events form the same transaction or not ; what has to be looked to is, rather continuity of action and unity of purpose 1936 Nag 250 1936 Cr C 1042

——cases of perjury can be committed in course of same transaction and may be jointly tried 1936 Nag 263 1936 Cr C 1025

(b) Persons accused of an offence and persons accused of abetment or an attempt

——where the accused was charged for an offence under s 506 read with ss 117 and 120 B I P C for the possession of some revolutionary leaflets held that the charge under ss 117 and 120 B. I P C was not bad 37 C W N 426 1933 Cal 603 34 Cr L. J 1073

(c) Persons accused of more than one offence of kind committed within 12 months

——where several persons are accused of theft committed in course of same transaction and they are also charged with committed by them jointly within a period of 12 months there is illegality. 39 C W N 741 62 C. 946

S 239 Persons accused of more than one offence of same kind committed within 12 months—*contd*

——offences under ss 41 (h) and 41 (j) of the Factories Act are offences of the same kind with n s 239 (c) Cr P C 1932 Pat 188 13 Pat L T 252 1932 Cr C 414 33 Cr L J 274 I R, 1932 Pat 65

(d) Persons accused of different offences committed in the course of same transaction

——sec 239 (d) is not controlled by either s 234 or sec 235 (1) The legality of a joinder of different persons and offences under s 239 (d) in the same charge depends on facts appearing on the face of the accusation and not on facts as they are established at the end of trial 42 C W N 621 1938 P C 130 **P C**

——the precise definition of the expression 'the same transaction' cannot be formulated and each case must depend on its own facts The Court is to decide whether the transaction was in reality a single one Where the two

n success on

acts formed

1933 Bom

——the relevant point of time in the proceedings at which the condition as to the sameness of transaction must be fulfilled is the time of accusation and not that of the eventual result 42 C W N 621 1938 P C 130 **P C** (30 B 49 1929 Bom 128) *Rel on* 29 C 385 *Dist*

——if several persons conspire to commit offences and commit overt acts in pursuance of the conspiracy these acts are committed in the acy and the

of various

carried out

committed

1e common

s could be

tried together 1935 Rang 299 36 Cr L J 1380 1935 Cr C 995

——where certain persons are charged under s 120 B for conspiracy to commit criminal breach of trust and cheating and each of them is charged with one or more of seven specific offences either relating to cheating or criminal breach of trust committed in pursuance

S 239 (d) Persons accused of different offences committed in the course of same transaction—*contd*

when he was being taken to his house next morning, accused 5 beat him, offences were not committed in the course of same transaction 1933 All. 354 34 Cr. L J. 863 1933 Cr C. 627, (1924 All 316, 25 M. 61 P. C 1928 All 417) *Rel on*

——where the accused who had printed the defamatory notice were charged under sec 501 and those who published and distributed it, were charged under s 500, a joint trial was not illegal 1935 All 769 36 Cr L J 1296 1935 Cr. C. 922

——where an accused tried for murder is tried jointly with others also for conspiracy to commit dacoities, there is likelihood of the jury being influenced against him by evidence not strictly relevant to the murder charge introduced by his joint trial 1937 Cal 269 38 Cr. L J. 1018.

——where the accused illegally possess a revolver for preparation of dacoity, the offence of illegal possession of the revolver is a continuing one and therefore possession of such weapon at the time of preparation for dacoity or taking part in dacoity will form part of the same transaction The accused can be jointly charged under s 399 I. P C and s 19 (f) Arms Act 1937 Lah 793

——persons committing rape on a woman on different occasions [illegible] Cr L J 750 [illegible] nse is quite dissociable [illegible] British India These [illegible] in the course of same transaction 1937 Nag 188 38 Cr L. J 542

——accused persons may be charged at one trial with the offence of conspiracy and also with the offence alleged to have been committed in pursuance of the conspiracy because they form one and the same transaction 1934 All 61 35 Cr L J 1349

——every offence of dacoity is complete as soon as the person [illegible] from him The mere [illegible] were committed by a [illegible] orm one and the same [illegible] 18

——where persons charged of distinct offences are tried together the procedure is certainly irregular, but the defect is cured by s 537 if no prejudice is caused thereby 1934 Pat. 112 35 Cr L J 1410 1934 Cr C 1317

(e) Persons accused of theft, extortion etc and receivers etc of articles.

——three persons were charged jointly for being in possession of stolen property One of them was further charged with two other acts of receiving other stolen properties on different dates the trial was not illegal. 1934 All 811 35 Cr L. J 1224 1934 Cr C. 996

S. 239 (e) Persons accused of theft, extortion etc. and receivers etc of articles—*contd*

——a joint trial of different sets of persons under ss. 401 and 413 I P. C is illegal 1932 Lah 485 I R 1932 Lah. 458 138 I C. 474 33 Cr L J 584 1932 Cr C 624

——where several persons are accused of theft under s. 380 committed in the course of the same transaction and they are also charged with two thefts committed by them jointly within a period of 12 months there is no illegality in their being tried jointly for both offences at one and the same trial The fact that one of them is convicted not under s. 380 but only under s. 411 will not make the trial illegal 39 C W N 741 62 C 946

——joint trial of receiver from receiver of stolen property with receiver and thief—under the circumstances there should be separate trial 1933 Sind 390 1933 Cr C. 1430

——as dacoity is an offence which includes theft or extortion, a joint trial of persons who are charged with offences under ss. 395 and 412 I P. C is justified 1935 O W N 1153 36 Cr L J 1467

——from the terms of sec 239 (e) Cr P C. it is clear that an offence which includes theft must mean an offence of which theft is a necessary and essential ingredient. Persons charged under ss 457 and 460 I P C are not persons charged with offences which include theft though both the offences must frequently be followed by theft and [illegible] charged with [illegible] J 794 1936 [illegible] accused of an [illegible] ns accused of receiving or retaining stolen property under s 411 I P C. 1937 Lah. 463 38 Cr L J 1061

——misjoinder of persons contrary to sec 239 (e) Cr P C. is an illegality and not a mere irregularity but it is curable under s. 537 if it has not occasioned a failure of justice 1936 All 337 37 Cr L J 794 1936 Cr C. 401

(f) Persons accused of offences under ss 411 and 414

——the phrase 'possession of which has been transferred by one offence' [illegible] tain property 1932 Bom 201 [illegible] 01 137 I. C. 140 33 Cr L [illegible]

—— [illegible] a single theft. 42 C. W. N 729

——persons accused of offences under ss. 411 and 414 in respect of several articles stolen at one theft may be charged and tried together 1935 Oudh 475 36 Cr L J 1200

——if more than one offence of theft has been committed in respect of certain property which could be designated as stolen property within s. 410 then the persons in possession of such stolen property cannot be tried jointly 1935 Oudh 327 36 Cr L J 602 1935 Cr C. 684

(g) Persons accused of counterfeiting coin etc

——A was charged under s 240 I P C for uttering counterfeit coin and B under s 243 for possession of counterfeit coin They were in Jullundur C who was in Delhi was charged under ss 240 243 and 109 there was no evidence of conspiracy, joint trial was illegal 1933 Lah 228 34 Cr L J 1253

S 242 Substance of accusation to be stated

——the M must indicate that both parts of sec 242 were complied with although a detailed note of the proceedings is not required to be recorded 1936 Pat 501 1936 Cr C 823 38 Cr L J 22

——the sec does not require a M to make a record of what he has stated to an accused in explaining an offence It is sufficient if the proceedings show that he has done that much and asked the accused to show cause 1934 Nag 258 1934 Cr C 1297

——non compliance with the provisions of sec 242 is not a mere irregularity but an illegality vitiating trial 1936 Pat 501 1936 Cr C 823 38 Cr L J 22 but the trial is not vitiated where the accused is not prejudiced and the accused cannot be prejudiced where the accused is in due course examined under s 342 but if the M proceeds to convict the accused under s 243 there would be manifest violation of law 16 Pat 97 18 Pat L T 370 1938 Pat 55

S 243 Conviction on admission

—— [illegible] committed [illegible] to hear the [illegible] ecution and [illegible] unnecessary 1934 Lah 96 35 Cr L J 1394

——where the accused s plea of guilty was not recorded in accordance with s 243 and the accused also denied the plea the conviction was bad 36 C W N 132

——the recording of one admission for a number of accused is bad 1932 Sind 211 140 I C 697 26 S L R 345 1932 Cr C 902

——the Court should not be astute to construe technical words inadvertently used by accused persons not trained to the law against them but should look to the statement as a whole and place a fair and liberal construction on it after giving the benefit of every reasonable doubt to the accused 1934 Nag 65 35 Cr L J 696

S 244 Procedure where no admission is made

——there is no discretionary power given in summons cases s 244 to refuse to compel the attendance of a witness upon whom t Court has already issued process 1933 Pat 494 34 Cr L J 1 1933 Cr C 1038

S 246 Finding not limited by complaint or summons

he cannot
triable as a
s constitute
(. L. J. 501 :
1936 Cr C. 384

S. 247. Non-appearance of complainant.

——in the case of any body, except a public servant the personal attendance of the complainant is necessary. Where the complainant does not attend, the more ordinary course is to acquit the accused, the exceptional course is to adjourn the hearing 1936 All. 658 · 37 Cr. L. J. 1028 1936 Cr C 817.

——s 247 applies only to summons cases Where a complaint is under a section which makes it a warrant case the correct sec. to apply is s 259, so that if the complaint is dismissed for default, the dismissal operates as a discharge and a subsequent trial on fresh complaint is not barred by s 403 1934 All 340 . 1934 Cr. C. 418.

——where the offences disclosed by the complaint were under ss 447 and 426 the fact that the Court adopted warrant-case procedure cannot affect the right of the accused to acquittal under s. 247 Cr. P. C. 1933 M. W. N. 1278

——the trial in a summons case commences when the M. takes cognizance under s. 190. It cannot be said that the trial in a summons case cannot be said to begin until the particulars of the offence are stated to the accused (40 M. 977 *not fol.*). Where a summons has been issued to the accused and the complainant does not appear on the day fixed and the Court acquits the accused the latter must be deemed to have been tried within s 403 though summons may not have been served and the accused may not have appeared 39 C W. N. 919 : 62 Cal 1119 · 62 C L J. 240 1935 Cal. 491 36 Cr. L. J 1288.

——absence of the accused does not affect the application of the section 1932 Mad 563 1932 Cr. C. 662 . 138 I. C. 288 . 33 Cr L. J 579 I. R 1932 Mad. 546.

——s. 247 does not apply when the entire evidence in the case has been concluded and the case has been adjourned only for judgment without the attendance of the complainant having been specially ordered [illegible] of
absence [illegible] be
sustaine[illegible]
—— [illegible] her
complaint lies against him on the same facts The fact that the complainant and his counsel did not appear because he mistook the date fixed does not give the complainant a right to institute a fresh complaint. 1934 Lah 211 : 1934 Cr. C. 446

——when a date is fixed for hearing of the case it is the duty of the parties to be present whenever the case is called on for hearing.

S 247 Non-appearance of complainant—*contd*

It will be no excuse for the party to say that he expected his case would not be reached But if a case is nominally fixed for hearing, when it cannot reasonably be expected to be reached and it is not in fact reached during the day, the party should not be penalised for his absence when the case is actually called on The mere unexplained absence of a complainant when a case is only called on for the purpose of fixing a new date is not under ss 247 and 259 good grounds for taking action under these secs 1934 Bom 130 35 Cr. L J 1139 1934 Cr C 475

——if a M under a mistake takes up a case under ss 352 and 447 on a day for which it is not fixed and dismisses the complaint in the absence of the complainant the dismissal cannot be said to be one under s 247 Cr P C and cannot operate as acquittal 1934 All 1025 1934 Cr C 1335

——if the complainant dies the Magistrate may in a proper case allow the complaint to be continued by a proper and fit complaint 1932 Nag 72 33 Cr L J 407

——discharge of the accused for want of proper complaint does not amount to acquittal under s 247 and the second trial on proper complaint is barred 36 C W N 1038 1932 Cal 871 1932 Cr C 893, 32 Cr L J 27 *Dist*

S 248 Withdrawal of complaint

——the M should in permitting the withdrawal place sufficient materials on the record to satisfy the H C that *prima facie* there was some good ground for the same 1933 Sind 357 1933 Cr C 1340

S 249 Power to stop proceedings when no complaint

——an order under this sec is neither one of dismissal of complaint nor an order of discharge and therefore sec 436 does not apply to it Hence the Dt M has no jurisdiction to quash an order under s 249 and direct further inquiry into the case 1934 All 17 35 Cr L J 564 1934 Cr C 45

S 250 False, frivolous or vexatious accusations

——sub-sec (1) contemplates that where the M discharges or acquits the accused he may in that very order call upon the complainant to show cause why he should not pay compensation 1936 Sind 240 1936 Cr C 1096

——the reasons to be recorded by a M passing an order under s 250 are the reasons why he directs compensation to be paid not why he regards the complaint as false and frivolous or vexati 1936 Rang 230 37 Cr L J 773 1936 Cr C 514

——an order for compensation passed without recording for passing it is illegal 1938 Oudh 99, 1938 Rang 161

——s 250 (2) requires the M to be satisfied that the was first false and second, either frivolous or vexatious The

S 250 False, frivolous or vexatious accusations—*contd*

that the complainant was not successful in establishing his case is no proof that it was false From the mere fact that the witnesses did not support the party by whom they were called, it is not safe for the M to s[illegible]
less to [illegible]
Cr C 22

——

with a view to bring pressure to bear against an opponent in a civil dispute, the M is abundantly justified in proceeding against the complainant under s 250 1933 Bom 233 34 Cr. L J. 878 1933 Cr. C 656

——when a notice is issued the complainant is entitled to show that the complaint was not false and either vexatous or frivolous 1933 All. 814 146 I C 691

[illegible] report

tion should not be made except in very exceptional circumstances 1933 M W N 900 44 M 51 *Rel on* 1935 Pesh 178 1935 Cr. C. 1310

——but where after examining all the witnesses produced by the complainant the M refuses to examine witness on commission and discharges the accused and orders for compensation, the order is legal. 1937 Rang 398

[illegible] the complainant justify [illegible] Cr L. J

[illegible] by any-person after the order of discharge or acquittal has been passed, for the initiation of compensation proceedings 1933 Nag. 296

——charge framed by one M. *denovo* trial by another, the latter [illegible] order of

S. 250 False, frivolous or vexatious accusations—*contd*

gating the offence committed against me" But if he lodges a formal complaint or gives information to the police that B is guilty and no evidence is found to connect B with the offence the prosecution must be found to be both false and vexatious because people have no right to launch criminal prosecution against others on mere suspicion 1932 Bom 177 I. R 1932 Bom 221 137 I C 129 33 Cr L J 392 1932 Cr. C. 236

——in an appeal from an order awarding compensation to the accused notice to the accused is not necessary but in most cases it is desirable that notice to him should be given. 34 Bom L R. 289 1932 Bom. 177 1932 Cr. C. 236 I R. 1932 Bom 221 137 I. C. 129 33 Cr. L. J 392

——there is no provision of law that requires notice to issue to the person to whom compensation has been awarded under s 250 1933 Lah. 545 34 Cr L J 533 1933 Cr C 816

——where the requirements of the sec are not complied with the order for compensation is bad 1937 Rang 301 38 Cr L J 599

——the M must record [illegible]
the order of compensation, [illegible]
unless the complainant ch [illegible]
when filed will in effect be r [illegible]

——compensation mor [illegible]
the methods of recovering a fine are provided by s 386 1932 Pat 301 33 Cr L J 958 I R 1932 Pat 290 13 Pat L T 536 140 I C. 72 1932 Cr C 773 F B

S 251 Procedure in warrant cases

——when a summons case and a warrant case are tried together the procedure to be followed is the procedure prescribed for the warrant case 1933 Rang 243 34 Cr L J 1180

——when an inquiry has commenced as a warrant case the proceedings must continue as such and the procedure as a summons case cannot be adopted to the prejudice of the accused although the case should have been tried as a summons case Nor can an actual grave omission in warrant case procedure be construed as consonant with summons case procedure 1933 Nag 192 34 Cr L J 340

——Chap XXI of the Code applies to a Presidency Magistrate as much as to other Magistrates except where the former are specially excluded from its operation 36 C W N 791 55 C L J 448 I R 1932 Cal 651 139 I C 755 1932 Cr C 809 1932 Cal 865 33 Cr L J. 828

S 252 Evidence for prosecution

——s 252 does not vitiate a conviction in a case in which the complainant has not been examined Sec 537 is a complete [illegible] the objection 1935 Pat 515 36 Cr L J 1354

S 252. Evidence for prosecution—*contd.*

——scope of sec. 252—the sec. is composed of two parts—first part refers only to such evidence as is offered on the day when the accused appears or is brought before the Court. It does not refer to every appearance of the accused—failure to comply with first part does not vitiate trial Magistrate's discretion in selecting witnesses to be summoned and when it is to be exercised 1938 Nag. 103

——it is not proper for a M to treat a prosecution witness as an accused person and to record his evidence in jail instead of examining in open Court or at his own house 1933 Oudh 265. 34 Cr. L. J. 1009

S 253. Discharge of accused.

——under s 253 the Court has two alternatives to follow. 1935 Pesh 23 36 Cr L J 632

ning
t the
by

——there is no distinction between orders of discharge under s 253
cannot be

under the proviso to s 436 such an order should not be set aside without notice to the accused and giving him opportunity to show cause why further inquiry should not be ordered 56 A 285 1934 All. 51 1934 Cr C 107.

——before an order of discharge can be set aside, it must be shown that it is perverse 1933 Lah 166 34 Cr L J 190, or manifestly unreasonable and inconsistent with an honest appreciation of the evidence before the Court 57 B 430 1933 Bom. 158 34 Cr. L J 564

S 254 Charge to be framed when offence appears proved

——where in a trial as a warrant case a summons case is disclosed procedure as summons case may be adopted and no charge need be framed 1931 M W N. 1319

cons 1935
Sind
Magistrate
whet The sec is
C W N
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the
Lah

S 255. Plea.

[illegible]

S. 255-A Procedure in case of previous convictions.

[illegible] venient to follow [illegible] hat the M should [illegible] g sentence, and [illegible] proceed to take evidence to prove it 1937 Pat. 131 38 Cr L J 484.

S. 256. Defence.

——there is no provision in the Code entitling a M to pass an order of acquittal in a case of default of appearance on the part of the complainant and his witnesses on the date fixed for their cross-examination 1937 All 127 38 Cr L. J. 361.

——the M should inquire from the accused whether he desires to cross-examine and it is incumbent on the M to make a record of this question and answer The word "recalled" means that if the witnesses are not present then the M. should issue process to insure their attendance 1937 All. 127 38 Cr L J 361

——the failure of the Court to ask the accused whether they wished to cross-examine the prosecution witness after the framing of the charge vitiates the whole proceedings. 1932 Mad 559 I. R. 1932 Mad. 641 1932 M. W. N 857 1932 Cr. C 589 139 I. C. 203 33 Cr. L. J 738

——where the accused's pleader desires to cross-examine witness before the complainant, the M should accede to the request 1933 Cal 189 142 I. C. 479 I. R. 1933 Cal 274 34 Cr. L J. 347 37 C. W. N 288.

[illegible]

S 258 Acquittal—*contd*

date on which the M thinking that the proposed comprom se m ght have materialised deait with the case under s 258 Cr. P. C. and recorded an acqu ttal, held that the M. had no right to do so as charges had already been framed 1933 Cal 358 1933 Cr C 494 37 C W N 712 34 Cr L J 498

writing
All 66c
Cr L
Mad 501)

——the expression ' honourably acquitted ' is one which is unknown to Courts of Justice it is used in Courts martial and other extra jud cial tribunals Where on
tion, the Courts accepted th
that he was not guilty of any
complete and presumably in
' honourable ' 61 C 108

S 259 Absence of complainant

——the order of discharge does not preclude a M from proceeding
e it is not necessary
ce and late appear

dismissal operates as a discharge and a subsequent trial on a fresh complaint without the revis on of the order of discharge is not barred by s 403 1934 All 340 1934 Cr C 418

——an order of discharge in respect of offences under ss 406 and 471 I P C for absence of the compla nant vitiates the filing of a fresh complaint on the same facts 1935 Bom 76 36 Cr L J 483 1935 Cr. C 137

——s 259 does not make it compulsory upon the M to d sm ss a complaint He may in his discretion do so 1933 Oudh 430 1933 Cr C 1315

——where the accused was discharged before any trial was l eld the M has no power to set aside his own order of discharge 1933 M W N 1429

S 260 Power to try summarily

——a summary trial implies speedy disposal of a case which can be heard and disposed of at once and is not intended for a compl cated case which necessitates a lengthy inquiry and the writing of an elaborate
J 1094 1934 Cr C 466
ige Act may be summarily tried
of the Dt M 1934 All 331

S 260 Power to try summarily—*contd.*

——a M. acts without jurisdiction if he reduces a grave offence to a minor one with a view to give himself jurisdiction to try a case summarily. 1934 Lah 243 35 Cr. L J. 1094

——a M. has no jurisdiction to try an offence under s 342 summarily and he cannot create a jurisdiction by charging for the lesser offence under s 341 1932 M W N 478

——where the case is hotly contested it is questionable whether a M. should try it summarily 1931 Mad 233 1931 M. W N 118 32 Cr L J 689 I R 1931 Mad 510

——summary trial though legal is most inappropriate in cases in which Govt servants are concerned as accused persons 1932 Lah 188. 1931 Cr C, 181 33 Cr L J 108

——where a Sub-Judge who has been given powers of a first class M and to try cases under s 260 is transferred to another place his powers come to an end and unless he is again authorised by issue of fresh notification he cannot exercise such power 1933 Sind 398 1933 Cr C. 1438.

——if more than one offence of receiving or retaining stolen property is by implication of sec 234 Cr P C tried at one summary trial, the aggregate value of the property in respect of separate offences should not be taken, but the value of the property in respect of each separate offence should be taken 1934 Sind 185 1934 Cr C. 1392

S 262. Procedure for summons and warrant cases

——in a summary trial, two sentences of three months for two offences cannot be passed to run consecutively It is in contravention of sec. 262 (2) under which the maximum is a sentence of three months in the aggregate 1934 Rang. 116 35 Cr L J 1413.

——a separate sentence to the extent of three months may be passed for each separate conviction and incidentally when a person is convicted at one trial for two or more offences it is incumbent upon the Court to pass separate sentences for each offence 1934 Sind 185 1934 Cr. C 1392

——summary trial by Honorary Magistrate on a charge under s 379 I P C, reference to District Magistrate under s 439 sentence passed by the Dt M without taking evidence is bad 1932 All 507 1932 Cr C 595 137 I C 208 1932 All 320 33 Cr L J 472

S 263. Record in cases where there is no appeal

——in summary cases the recording of evidence is governed by ss 263 and 264 and sec 355 has no application at all to summary cases In such cases the trying M is not bound to record any notes of the evidence 1934 Bom 157 58 B 298 35 Cr L J 841 1934 Cr C 344

——however summary a trial may be the vital evidence a each accused, when there are several accused persons must be 18 N. L. R 140.

S 263 Record in cases where there is no appeal—*contd*

——s 350 which gives a M the jurisdiction to continue a trial begun by his predecessor is not applicable to cases tried in a summary manner A M continuing in a summary manner, a trial which was commenced in a summary manner by his predecessor acts without jurisdiction 1936 Sind 40 37 Cr L J 455 1936 Cr. C. 230

——the M should in recording his reasons for conviction in a summary trial, show that there was sufficient material before him to support the conviction and should state the ingredients of the offence 1934 Lah 596 35 Cr L J 1464 : 1934 Cr C 925

——sec 263 requires that the M shall enter certain particulars including the plea of the accused and his examination (if any) From [illegible] -cused [illegible] y that [illegible] nerely [illegible] of his [illegible] -c 537, 1935 All 217 36 Cr L J 1290 1935 Cr C 260 1935 Sind 193 36 Cr L J 1484 (9 C W N 76 (note) 1926 Sind 1) *Rel on*

——in cases tried summarly by a Bench of Magistrates where there is conviction there must be a brief statement of reasons for such conviction 1937 Mad 480 38 Cr L J 581

——even in a summary trial the statement of reasons for conviction should present a clear statement of facts constituting the offence and should show that each of the ingredients necessary for a conviction has been considered and held proved by the M 1935 Sind 144 1935 Cr C 752

——although a certain expedition is necessary and is most desirable in summary trials yet the summary procedure laid down in the Cr P C must not be made more summary Sec 263 lays down the minimum requirements of law Evidence must be heard and procedure laid down in Chap XXII must be followed 1938 Sind 70

S 268 Trial before Courts of Sessions to be by jury or assessors

——the discretionary po [illegible] a d of assessors is conferred not [illegible] lso upon an Additional Sessions Juc [illegible] d to the Administered Areas in Hy [illegible] W N 741 38 Cr L J 498 1937 M W N 546 P C

——the normal procedure under the Code is that an offence is triable with the aid of assessors in the absence of a notification of the Local Govt directing that such an offence is triable by jury I L R (1937) 1 Cal 306

——it is within the competence of the Sessions Judge in a case where the accused persons are being jointly tried by jury, and by the Judge with the aid of the assessors to take into consideration the entire evidence produced in the case in dealing with the charge triable by him

S. 268 Trial before Courts of Sessions to be by jury or assessors—*contd.*

may have charge.

be either by jury or with the aid of assessors and in a trial with assessors the Sessions Judge must take and record the opinion of all the assessors on all the charges Failure to do so vitiates the trial. 1934 Oudh 354 35 Cr L J 1066 1934 Cr C. 1049

S 269 Local Govt may order trials to be by jury.

—charge under sec 395 and 399 I P C further charge of

—the plain meaning of the language used in s 269 (3) is that the procedure indicated in that sec is applicable when the accused are charged with more than one offence Where in a case certain accused charged with murder were tried jointly with other accused charged with

set of men acting as a jury at one moment in respect of certain charges and assessors at another moment in respect of certain other charges though legal under the Cr P C is most undesériable one Where in such a trial the jury acquit the accused in respect of former set of charges and also acquit the accused as assessors in respect of other set charges passed on the same facts and the Judge accepts the verdict of the jury but does not accept
the accused, he acts illegally
164 37 Cr L J 182 and 193
—the powers of transf
way limited or controlled by s

J 1161
from power otherwise
fences should not come

S 271 Commencement of trial

—the sec does not mean that if the accused at a later the trial chooses to plead guilty, the Court is not entitled to record

S 271 Commencement of trial—*contd*

plea and convict the accused on the basis thereof 1934 Pat 330 35 C L J 1322 1934 Cr C 722

——the expressions 'the Court' in s 271 and 'a Court of Sessions' in s 412 obviously mean the 'Judge' only who in his discretion, may ... discretion no ... not properly ... h the appeal ... convicts the ... uilty must be ... the Court should carefully consider whether the accused fully understood the nature of the charge 12 Rang 616

——a plea of guilty is not a confession such as is dealt with in the Evidence Act It is a statement which if accepted by the Court amounts to a waiver on the part of the accused of trial in which alone a confession might be utilized in evidence 1934 Pat 330 35 Cr L J 1322 1934 Cr C 722

——a plea of guilty in the hope that a lenient sentence would be passed is not in itself a ground for departing from the ordinary tariff of punishment for the offence *Above case*

——where the M questioned the accused as to whether the plea was voluntary and took the opinion of the assessors the action was not illegal and even if there was irregularity it was cured by s 537 *Above case*

——where there are two different charge sheets on the record which does not show which was read over there is very serious irregularity prejudicing the accused 1935 Oudh 241 36 Cr L J 477 1935 Cr C 442

S 273 Entry in unsustainable charges

——this sec gives the H C power to stay proceedings on charges which have no merits before the commencement of a trial The Sessions Court has no such power. 1935 Nag 202 36 Cr L J 1389 1935 Cr C 1099

S 274 Choosing a jury

——eighteen jurors ... eight were present out ... trial, held that it was not ... to send his Court officers ... serve as jurors 61 C Cr L J 803, (1928 C 212, 122 I C 558) *Ref*

... g of a jury was done in due form of law ...

S. 274. Choosing a jury—*contd.*

900 · 39 C. W. N. 954 : 1935 Cal. 407 . 36 Cr. L. J. 944 1935 Cr. C. 630 **Sp. B.**

——if there is no complaint by the accused as regards the insufficiency of jurors the prosecution Court can take objection towards the end of the trial 1932 Cal. 750 : 1932 Cr. C. 744 : 14 I. C. 18 : 39 Cr. L J. 869 . I. R 1932 Cal. 683.

S. 275. Jury for trial of European and Indian British subjects and others.

——a person who does not satisfy the definition of "European British Subject" is not a European within the meaning of sec. 275. Where in a trial of a European British Subject under Chap. XXXIII only two out of five jurors were Europeans or Americans the conviction should be set aside 1934 Pat 200 35 Cr L J 827 1934 Cr. C. 384.

——no privileges are given to Europeans other than European British subjects and such Europeans can be tried by Indian Courts. 1933 Nag. 136 1933 Cr. C 610 I. R. 1933 Nag 153 143 I C. 17.

S. 276. Jurors to be chosen by lot.

——the word "jurors" in proviso 2 means actual jurors and not potential jurors, and the number of jurors required therefore means the number required to make up the quorum under s 274. "Chosen" [illegible]

quorum and not the deficiency of persons summoned for the purpose of making up the minimum number of ten among whom lots are to be drawn. *Above case.* (1928 Cal 83 **F. B**, 1931 Cal. 178 **F. B**) *Rel. on.* 1927 Cal. 242, 787 *Diss from*

——there is no provision to ascertain beforehand how many of the [illegible]

C. W. N. 377 1932 Cr. C. 554 1932 Cal. 536

——where special jurors to the number of eighteen were summoned but only five were present [illegible]

it is open to the Judge to make up the deficiency from persons actually

S 276. Jurors to be chosen by lot—*contd.*

present whom he considers suitable If he is unable to do this the only other course left to him is to postpone the trial and summon another jury But he cannot summon jurors from the town and fill up the deficiency I. L. R (1937) 2 Cal 482

S. 278 Grounds of objection.

——where the allegations of misconduct are vague and are not supported by affidavit the Judge does not exercise a wrong discretion in refusing to hold an inquiry 1936 Oudh 268 37 Cr. L J 749 1936 Cr C. 625.

S 282 Procedure when juror ceases to attend.

——it is entirely for the Judge to determine and it is entirely within [illegible]

discharge the jury and order a new trial In England the Judge has the power to discharge the [illegible] before or after the [illegible] plied in India. [illegible] J 941 1934 [illegible] W N. 269) *Ref.*

——the inherent power of a Sessions Judge to discharge a jury is not confined to cases of misconduct or to the ground mentioned in ss 282 and 283 but plainly extends to cases where the Judge finds reason for doubting the impartiality of the jury after the trial has proceeded for some days 1937 Pat 369 38 Cr. L J 777 16 Pat 8

S. 284 Assessors how chosen

——s 284 does not prescribe that the assessors are to be chosen by lot or in any particular manner The word "chosen" does not necessarily imply that there ought to be a selection from a larger number. Sec 326 lays down the procedure which 'shall ordinarily" be followed and is not mandatory. 1938 Pat 60, (1930 Cal. 212, 1931 Pat. 152) *Ref.* 1918 Pat 420 *Dist*

——where the language of the Court is Hindi, the Hindi knowing jurors and assessors are competent to take part in the trial of cases in which the evidence, arguments and summing up are given in Hindi. If evidence is given in Hindi, the fact that it is taken down in English [illegible]

Disting.

S 286 Opening case for prosecution

——if the Public Prosecutor is of opinion that a witness who was examined on behalf of the prosecution in the committal proceedings is a false witness or is likely to give false evidence he is not bound to call that witness or to tender him for cross examination but he is bound to have the witness present at the trial so as to give the Court or the defence an opportunity to examine him as a defence witness when he will have the right to cross exam ne him S milarly he is not bound to call witnesses wl o are not in a position to give material information 14 Rang 45

persuaded under s 540 to summo i such witnesses 1936 Lah 533 37 Cr L J 742 1936 Cr C 568 **F B**

S 288. Evidence given at preliminary inquiry ad missible

——the deposition taken before the comn tt ng M, wl en adn itted under sec 288 Cr P C can be used as evidence in tl e case for all purposes a id not merely for tl e purpose of cross exa n nat o i The words subject to the provis ons of the Indian Evidence Act cannot be read so as to lim t the purposes for which it may be used 41 C W N 741 1937 P C 119 38 Cr L J 498 1937 M W N 546 39 Bo L R 966 **P C**

——sec 228 is not to be used l ghtly or as a matter of course T... proper occasion to use it is when the Judge is satisfied tl at tl e sta... made before l im is substai tially false and the statement n ad... the comm tt ng M is substantially true 30 S L R 238 193... 61 38 Cr L J 487

——ev dence must be judged as all evidence must be accor... facts of each part cular case 1936 Lah 357 37 Cr L J 5... Cr C 298

——wl ere every one of the witnesses l as been demons... trial to have coi trad cted the statement that l e made... committing M it would not be safe to convict the accuse... 597 38 Cr L J 765

——t would not be safe to base a conv ct on ...

[illegible]

1936 Lat 11

——earliar statements of witnesses who ... accused and resiled from in tl e Sess ons trial ...

S 288 Evidence given at preliminary inquiry admissible—*contd*

as evidence under s 288 1935 Mad 479 36 Cr L J 1107 1935 Cr C 142

——the previous statement of a witness recorded under s 164 Cr P C may be treated as corroboration under s 157 Evidence Act of the witnesse s deposition admitted in evidence under s 288 16 Pat L T 730 37 Cr L J 235 1936 Pat 11

——*Quaere* Whether in order to support a conviction the evidence *admitted under s 288 invariably requ res some independent* corroborat ons in the same manner as the statement of an accomplice 1935 All 691 36 Cr L J 823 1935 Cr C 788

——before the convict on of the accused on the basis of such previous statement can be legally supported there must be independent corroboration of the truth of the statements and there must be sufficient reasons for preferring such evidence 1934 Oudh 182 35 Cr L J 797 1934 Cr C 578 1933 Rang 57 34 Cr L J 286 1933 Cr C 452

——the statement before a committing M can be transferred to the record of the Sessions Judge only if the person is examined as a witness before the Sess ons Judge His stateme it will be admiss ble under s. 33 Evidence Act only if the Judge holds that the w tness was incapable of giving evidence before him 1934 Lah 212 35 Cr L J 349 1934 Cr C 447

——the statement transferred to the Sess ons record under s 288 is not confi ied to the purposes of corroboration or contradict ons of the evidence given before the S J but can be acted upon precisely as if that evidence has been deposed to before the S J 1934 Lah 743 35 Cr L J 1005 1934 Cr C 1095

S 289 Procedure after examination of witnesses for prosecution

S 290 Defence

——any arbitrary and undue curta lment by the Court of the ... if the Judge has ... case has not been ... itself be a good ... Cr L J 673 15 Pat 817

S 290 Defence—*contd*

——where there are more than one accused their counsel shall all

S 291 Right of accused as to examination and summoning of witnesses

——when in a case of forgery the Crown relied on expert evidence the Court is competent to summon expert witness on behalf of the defence though the accused has not the absolute right to get such witness 1934 All 372 35 Cr L J 591 1934 Cr C 437

——an accused person cannot ask as of right that newly named witnesses should be summoned but his prayer should not ordinarily be refused if there is time to secure the attendance of the witnesses before the conclusion of the trial 1933 Pat 559 1933 Cr C 1259

S 293 View by jury or assessors

——the provisions of this sec are imperative A Sessions Judge who makes a local inspection and prepares a memorandum without the assessors being present commits an illegality which makes the proceedings void and the memorandum cannot be utilised 1934 Oudh 499 35 Cr L J 1496 1934 Cr C 1379

S 294 When juror or assessor may be examined

——When one of the assessors expressed that he was determining to help the accused he was not a proper person to act as an assessor and in such case the H C has power under s 561 A to order a new trial with the help of new assessors 1933 Lah 926 1933 Cr C 1385

S 297 Charge to jury

——a charge to jury ought to be delivered extemporaneously immediately after the conclusion of the final speeches of the counsel on both sides or of the evidence in the absence of such speeches A mere reference to a number of sections of the Penal Code and some explanation of the provisions without relating them to the particular facts of the case is not sufficient the direction as to reasonable doubt must be at the end of the charge or in its appropriate place in the body of the charge and [illegible]
The Judge [illegible]
the jury to [illegible]
evidence an[illegible]
story 62 C[illegible]
1246 1935 Cr C 910

——where a Judge in his charge to the jury places before the jury inadmissible and irrelevant evidence the charge is bad 1938 Cal 364

——the Judge is bound to sum up the evidence whether or not the jury desire him to do so It is not necessary for him to read his notes

S 297 Charge to jury—*contd.*

irable to read his
ary for him to go
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have

have returned the same verdict, there was misdirection vitiating the trial 1933 P C 218 34 Cr L J 886 1933 Cr. C 1302 P. C

——the onus of proof in criminal cases never shifts to the accused and they are under no obligation to prove innocence or adduce evidence in their defence or to make any statement Where the Judge repeatedly draws the jury s attention to the fact that the accused have failed to give any explanation of facts adduced in evidence against them it amounts to misdirection In any case the Judge must first give the accused an opportunity of explanation by drawing their attention specifically to such evidence 63 C 929 40 C W N 432 1936 Cal. 73 37 Cr. L. J 394

charge to the jury

289 1936 Cr C 900 P C.

——to charge the jury at very great length may itself be an obstacle to their arriving at a correct decision, only essentials should be clearly brought out, 1933 Pat 496 1933 Cr C 1061; the aim of jury trial is concerned with the definite proof of distinct offence and the use of language tending to divert the attention of the jury from the main point to a subsidiary point should be deprecated 1933 Pat 488 34 Cr L. J 892 · 1933 Cr. C. 1030

——joinder of charges under ss 302 and 201 I. P. C—duty of Judge in addressing jury 41 C. W N 414.

——where the Judge did not state whether the confession by one of the accused was voluntary or not it was left to the jury to determine whether it was voluntary or not, that is, whether it was admissible or not and he conveyed the impression to the jury that the evidence of the witnesses before the Court found corroboration in the statements made by them before the police thereby acting in contravention of s 162 Cr. P C., held that the charge was defective and the misdirection vitiated the charge 1934 Cal 717 1934 Cr. C 1102

——the voluntary and involuntary nature of confession involves a mixed question of both fact and law. Where Judge directs the jury to

S 297 Charge to jury—*contd*

decide whether certain confessions are admissible in evidence or not, he commits error in law But unless there is consequent failure of justice the trial is not vitiated 63 C 1089 63 C L. J 142 37 Cr. L. J. 076 1936 Cr. C 380 1936 Cal 227

[illegible] of [illegible] d [illegible] ıg [illegible]

36 Cr. L. J 921

——a charge should aim at a fair and impartial presentment of facts to the jury for their decision When the prosecution has omitted to call certain important witnesses the Judge ought to caution the jury that it is *prima facie* the duty of the prosecution and not of the accused to call them and that if they are not called without sufficient reasons being shown it is proper to draw an inference adverse to the prosecution. [illegible]

[illegible]

about the law. 37 C W N. 1102

——some sequence must be adopted by the Judge in charging the [illegible] opinion to [illegible] e the sole [illegible] when he [illegible]

——where the statement of accused under s. 342 amounted only to an assertion of innocence and an explanation of how he had made the [illegible]

[illegible]

Rel on

——it is not a correct proposition of law to lay down that a person who attempts to enforce a claim to property which he cannot substantiate thereby creates the position that possession is with another, and if the language of a charge is open to that construction it is bad for misdirection. 1933 Cal 242 34 Cr. L J 668 1933 [illegible] 321

——where the witness in the Sessions Court [illegible] the truth of his statement made before the committing M. [illegible] before

S 297 Charge to jury—*contd*

the committing M. though may be evidence, yet the Judge in his

a

——a judge does not fulfil his duty if he merely reiterates the evidence of both sides and then leaves the jury to decide the case one way or the other, he should direct the jury as to the weight which in his opinion, ought to be attached to the evidence 1935 Rang 214 36 Cr L J 1232 1935 Cr. C 847 He must marshall the evidence so as to bring out the lights and the shades the probabilities and the improbabilities 62 C 337 1934 Cal 847 1934 Cr C 1364 36 Cr L J 619

——duty of the judge in a murder case—effect of the judge repeating the evidence in a long rambling charge omitting to deal separately with each accused 62 C L J 43 37 Cr L J 673 1936 Cr C 308 1936 Cal 186

...nd not ... on ... ion ... her ... ong themselves 41 C W N 65 37 Cr L J 963 1936 P C 259 1936 Cr C. 900 P C

——on the question of presumption under s 114 ill (a) of the Evi Act the Judge should tell the jury that when the prosecution has proved recent receipt and possession of stolen property by the prisoner they may, find the accused guilty in the absence of any explanation, but if reasonably true explanation is given the accused is entitled to an acquittal 62 C. 956 39 C W N 620

——there was absolutely no evidence on the record to show that the accused had any intention other than the one which must normally be drawn in cases in which one man intentionally stabs another with sufficient force to penetrate the abdominal walls. The Judge stated 'if you find that the accused was there and inflicted this stab wound you ought to find him guilty of murder' and did not raise a case before the jury which was not raised by the *accused there* was no misdirection in such charge 1936 Rang 421 37 Cr L J 1050 1936 Cr C 836

——in a charge to the jury the evidence in the case was not ... knesses in the prosecution ...ed

——the fact time to time and

S 297. Charge to jury—*contd*

brought to the notice of the jury It is not enough to say that the defence pleader has presented the case in an able manner. 1934 Nag 94 35 Cr. L J 957

——expression of opinion by the Judge on matters of evidence, when it is not of such a nature as to leave nothing to the jury for

——where the Judge entirely misconceives the legal position with regard to a point and in his charge to jury gives undue prominance to an irrelevant point as to the existence of a right of private defence of property and also fails in his charge to consider whether such right of private defence subsisted at a particular point material for decision, he misdirects himself and the jury on that point vitiating the vervict 38 C W N 854 1934 Cal 610 59 C L J 482 35 Cr L J 1367 1934 Cr C 908

——when the Judge omits to remind the jury that the statement attributed to individual accused is not evidence against the other accused and the Judge repeatedly states the case for prosecution without clearly pointing those facts of it which are not supported by evidence and when referring to certain anonymous petitions tells the jury that evidence given on oath is of much greater value than statements made by unknown persons in the anonymous petitions when there is nothing

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——where at the test identification, 44 suspected persons were put with only 15 non suspected persons and the only evidence against the accused was the retracted confession of co accused and the evidence of a witness who picked out the accused at the test identification, held that as the Judge did not charge the jury with respect to the defective nature of the test identification the jury must have been inevitably misled 1934 Pat 537 1934 Cr C 1192

——in a trial for an offence under s. 366 I P C. failure to warn the jury about the danger of convicting the accused on the girl's evidence only amounts to a non-direction which vitiates the trial The trial is also vitiated where the Judge fails to direct the jury as to whether there is any evidence corroborating the girl s statement of the kind required by law 1936 Cal 18 37 Cr. L J 359 1936 Cr. C 110.

——when charges of sexual criminal character are brought wit corroborating evidence the Judge should warn the jury that wh after due and careful consideration they are entitled to acc

S. 297 Charge to jury—*contd.*

uncorroborated evidence of the woman, it is really not safe to do so more specially when the person accused is the subject of dislike or enmity on the part of the woman herself. Want of caution vitiates the charge to the jury. 65 C L. J. 83 1937 Cal 463 38 Cr. L. J 931, similar case, 41 C. W. N. 631 1937 Cal 321.

——in a trial under s 366 the direction to the jury that the fact of previous intimacy of the accused with the girl is wholly immaterial, is misdirection. 1933 Cal 718 1933 Cr. C 1268

——a charge of common intention to commit culpable homicide not amounting to murder is absolutely unreal and in nearly every practical case must be ridiculous. It is difficult to suppose that two or three persons who have the right of private defence would ever in real life have a sort of discussion to reach the common intention of exceeding that right If a Judge directs a jury that they can on certain facts bring in a verdict of a common intention to commit culpable homicide not amounting to murder under s 304, Part I read with s 34 I P C. a more confusing way of putting a case before a jury cannot be imagined In such a case it is not enough merely to explain the application of sec 34 I. P. C, evidence should be dealt with to point out what, if any, there is to support such a theory. 41 C. W. N. 570

——s. 34 I. P C deals with intention and part II of sec 304 I P. C. deals with knowledge. The result is that in order to establish a charge under s 304 Part II read with s. 34 I P C. there has to be a peculiar combination of knowledge and intention which would hardly arise in real life. The evidence bearing upon the intention on the one hand and the knowledge on the other must be carefully put before the jury. Otherwise their verdict cannot be upheld. 41 C W. N 575.

——where there is strong enmity on either side on the part of two factions in a village and there are two diametrically opposite stories supported on oath by two sets of witnesses, the Judge ought to exercise [illegible] in assisting [illegible] one [illegible] els- [illegible] ase [illegible] to [illegible] 41 [illegible]

——where the charge to the jury ran as follows — [illegible] 410, 467 and 120-B and other connected ss 415 416, 463 464 and 120 A I. P C. read and explained to the jury" and the contention was that the charge did not disclose how the secs were actually explained, held that as none of the secs. presented any difficulty the explanation was sufficient. 1932 Cal. 786 1932 Cr. C 829. 140 I. C. 723.

S 297 Charge to jury—*contd*

——a direction in a charge in a case under s 304 I P C to the effect that if the accused party were held to be in possession then they were not guilty of any offence even though there was a free fight resulting in death of some of the complainant s party, is bad in law 1933 Cal 242 1933 Cr 321 34 Cr L J 668

——a Judge is competent to express his op nion to the jury provided he makes it clear that his opinion on the facts is not b nding on them 1933 Cal 190 I R 1933 Cal 312 142 I C 653 34 Cr L J 430 1933 Cr C 236

——where there is no specific defence specific reference to the defence case need not be made in tl e charge It is sufficient if the judge draws the attention of the jury to the discrepan ies in *the prosecution evidence and the cr t cisms advanced by the defence* 59 C 1123 36 C W N 377 55 C L J 132 1932 Cr C 564 1932 Cal 536 33 Cr L J 694 I R 1932 Cal 517 138 I C 756

——if any defence is supported by evidence the Judge should not omit to state that defence to the jury though the pleader for the accused did not urge it 37 C W N 261 1933 Cal 656 34 Cr L J 1078

——where the Judge om tted to point out that the mere removal of the corpse from a certa n place by the accused d d not prove that the murder had been committed there was misdirection vitiating the verdict of the jury 37 C W N 348

——the jury should be told that the evidence of an accomplice requires corroborat on and it is for the Judge to rule whether or not there is any corroborative evidence and the jury is to decide if they should accept it or not The Judge s failure to direct the jury accordingly amounts to misd rection 1932 Cal 295 137 I C. 497 I R 1932 Cal 336 33 Cr L J 477 1932 Cr C 264 1933 Pat 96 142 I C 809 I R 1933 Pat 176 34 Cr L J 421 13 Pat L T. 802

——the Judge should give a strict warning as to the principles appl cable to the ev dence of the approver 37 C W N 290 1933 Cal 509 34 Cr L J 841

——though the Judge need not explain to the jury abstract principles of law he must explain those particular sections of the I P C wh ch apply to the particular cases 37 C W N 1131 1933 Cal 722 34 Cr L J 1231

——it is for the Judge to dec de for himself whetl er *prima facie* tl e confession of the accused appears to him to have been induced *by threat or prom se and whether it is admiss ble It is also the* duty of the Judge to point out to the jury that the fact that he cons ders the confession admissible does not necessarily mean that it is also true 1933 Cal 187 142 I C 639 34 Cr L J 369

——where the prosecution fa led to summon certain wi named in the first information and the Judge told the Jury

S. 297 Charge to jury—*contd.*

if they accepted the version of the prosecution that they were not called because their evidence was valueless they should not draw the inference under s. 114 (g) Evi. Act and if they did not believe the same they could draw the inference, there was no misdirection. 58 C. 1335 1932 Cal. 118 I. R 1932 Cal 123 · 135 I. C. 443 1932 Cr. C 103

——emphasis should not be given on legal presumption of

[illegible] L. J. 439 1932 Cr C 404.

——in a trial under sec 366 the direction to the jury that the fact of previous intimacy of the accused with the girl is wholly immaterial is misdirection 1933 Cal 718 1933 Cr. C 1208.

——where the retracted confession of the co-accused is sought to be corroborated by the tainted evidence of another accomplice the Judge must emphasise in his charge on the necessity for untainted and independent corroboration. 36 C. W. N. 874 I. R. 1932 Cal. 709 140 I. C. 379.

[illegible]

fact that one or two minor deta ls were not placed before them would not amount to such misdirection as would vitiate the trial 57 C L. J. 583

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440 30 Cr. L J. 919 10 Pat 413

——where in a charge to the jury the Judge stated "Nevertheless if you find that the defence case is a false one it is certainly an element in [illegible]

amounted to most serious misdirection. 1937 Cal 463 65 C. L. J 83 38 Cr. L. J. 931

S 297. Charge to jury—*contd.*

——where the statement made by a person to other people had been treated as evidence by the prosecution without examining that [illegible] and the Judge placed that statement before the [illegible]

non direction 38 C W N 446 1934 Cal 557 1934 Cr C 789

——after the jury have considered the verdict and the foreman has informed the Judge what is their verdict or the verdict of the majority, the Judge cannot charge the jury afresh It is only if the jury after retiring to consider their verdict inform the Judge that they did not understand the law as explained that the Judge may explain the law again to the jury 1935 All. 1020 36 Cr L. J 1377 1935 Cr. C 1254

S 298. Duty of Judge

[illegible]

——where the Judge thinks that the evidence is so weak that there is very grave doubts as to the guilt of the accused, the omission to direct the jury to give the accused the benefit of doubt may be a misdirection which may be said to have prejudiced the accused 60 C L J 45 1935 Cal 31 1935 Cr C 196 36 Cr L J 480

——evidence of previous conviction can neither be admitted in evidence nor referred to by the Judge at the time of addressing the jury, when there has been no such foundation laid as the law requires for the reception of such evidence 1935 Sind 115 36 Cr L J 1310

——where a Judge says that the prosecution story is corroborated [illegible]

1935 Cal 308 36 Cr L J 921 1935 Cr C 459

——where in a trial by jury of an offence of rioting, the jury were asked to give an opinion on a riot which under the law in Allahabad is excluded from jury trial and the Judge also failed to point out to the jury the guilt of each of the persons charged, regarding all the accused as body of men and not as individuals, the trial was vitiated by mis direction, 1933 All 128 34 Cr L J 441 5[illegible] Cr. C 283

S 298 Duty of Judge—*contd*

——where with reference to the statements made by two accompl ces the Judge told ' the jury that the answer to the question whether the two statements can be used to corroborate each other depended upon whether the two statements are independent held that there was no definite and clear indication to the jury with reference to the two statements and that the jury were apt to be misled by the direction g ven 38 C W N 586 1934 Cal 651 1934 Cr C 933

——on tl e one hand a conv ct on founded on the uncorro evidence of one or more accomplices alone is val d in law but on other hand the evidence of accompl ces should not be left to a jury without necessary direct ons and observat ons from the Judge For Judge to w thdraw consideration of gu lt or innocence of the

be based upon less m sd rect on

Cr C 720

pl ce the Judge ant parts

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Cr L J 551 1934 Cr C 165

——where the case for the defence was fully la d before the jury

part of ed not of

the Judge to rep rt to the jury every argument or suggestion urged on behalf of the defence 37 C W N 1066 58 C L J 66

——in a case of murder it is the duty of the Judge to help and guide the jury to a prop to the essential po nts attached to the eviden s bil ty wh ch rests upon benefit of doubt must be

mpla nt

Cr L J 850

——where the prosecut on has put forward a certain case that a certa n document has been created between certa n fixed dates but fa ls to prove the same the Judge should po nt out to the jury the effect of such a f nd ng His fa lure to do so makes the charge defective 1934 Cal 622 35 Cr L J 1216 1934 Cr C 907

S 298. Duty of Judge—*contd.*

——the admissibility of evidence is for the Judge to determine before he admits it to the jury When it is done, the question of proof, which is for the jury to decide, comes in Its credibility and weight are entirely questions for the jury 39 C W. N 27 1934 Cal 853

"It is the duty of the
unless in his opinion
there is no ground for thinking that it has been extorted under undue influence It is your duty to decide whether the confession is true or not, and in order to do so, you will have to form an independent judgment as to whether the confession was obtained under undue influence or not', held that this amounted to a misdirection 38 C W N 659 1934 Cal. 636 61 C. 399 35 Cr. L J 1449 1934 Cr C 929

——whether a confession was voluntary or not and whether it was admissible or not is a question of law which the Judge himself should decide and then he should leave it to the jury to say whether it was true or not Leaving the question of its admissibility to the jury is a misdirection 38 C W N 586 1934 Cal 651 1934 Cr C 933 Though the Judge is to decide the question of voluntariness of a confession but that is no reason why the jury should not consider the question of voluntariness in its bearing on the truth of the confession. If the Judge says in his charge to the jury that he had decided that the confession was voluntary and that the jury should take that point as settled,
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Cal 227 37 Cr L J 676 1936 Cr C 380

1934 Cr C 933

——the direction of the Judge in his charge to the jury that the

Judge said the girl being a minor can have no will of her own in law

S. 298 Duty of Judge—*contd.*

and that in law her will was presumed to be the same as her guardian's will," there was misdirection to the jury 36 C. W. N. 49 I. R 1932 Cal 382 1932 Cal 442 33 Cr L. J 512 137 I. C. 819

——in a case of rape even though the accused denies the whole story, the judge should tell the jury that the burden was on the prosecution to prove in addition to the factum of sexual intercourse ... accused committed the offence ... 37 C W N. 484 1933 Cal

... ould warn the jury not to accept evidence of the girl raped unless they find that it is corroborated in some material particular implicating the accused He should also tell them that if inspite of his warning they came to the conclusion that they believe the girl and think the accused guilty then they have the right to convict him on her uncorroborated evidence 38 C W. N 52 1933 Cal. 833 1933 Cr C 1493

——where the Judge after stating the facts, goes on to describe certain letters, which are only admissible as corroborative evidence under s 157 Cr P. C without explaining it to the jury and leaving the jury to imagine that it was substantive evidence, that in itself is a non direction amounting to misdirection. 62 C L J 43

——where the jury first returned a confused verdict but the Judge having directed them afresh they returned a second verdict, the conviction based on that verdict was not bad 85 C 1335 1932 Cal 118 ...

in their minds the necessity of at least five persons being concerned in the offence 1932 Cal 295 I R 1932 Cal. 336 33 Cr L. J 477 1932 Cr C 264 137 I C. 497

——where the appellants were convicted and sentenced after a ... transpired ... the ... was ... juror arising from his inability to understand the proceedings ... result of the trial being a clear miscarriage of justice the conviction must be set aside. 1933 P. C. 208 58 C L J. 300 38 C. W. N. 11 34 Cr. L J. 843 1933 Cr C. 1306 P. C.

S 299. Duty of jury.

——an accused person who stabs another in the abdomen with ... have ...

S 299 Duty of jury—*contd*

intention other than the ordinary one deducible from such act and no defence is put forward that the offence might be culpable homicide merely and not murder and the only defence set up is that he came on the scene after the occurance, it is no part of the duty of the Judge to explain to the jury the law of culpable homicide and the omission to do so does not amount to a misdirection 14 Rang 716 F B

S. 301 Delivery of verdict

——the statute law in India does not provide any particular form in which the jury are to deliver their verdict Consequently there is no legal bar to the jury returning their verdict in any way they think fit, provided that it is complete and exhaustive as to the facts in issue which go to make up the charges 60 C L J 45 36 Cr L J 480 1935 Cal 31

——recommendation made by the jurors in their verdict is not a part of the verdict and should not be treated as such 1934 Oudh 34 1934 Cr C 88

——a verdict of the jury after they had been discharged is not competent and a conviction based thereon is wrong 1934 P C 227 1934 Cr C 1134

S 303 Verdict to be given on each charge

——a verdict of not guilty covers every degree of mental condition from mere hesitating doubt as to the guilt of the accused to a complete conviction of his innocence A verdict that they (the jurors) give the accused person the benefit of the doubt is not known to law 37 C W N 341 1933 Cal 404 34 Cr L J 608 1933 Cr C 582

that the verdict is not correct but that it should be under s 302 I P C and questions the jury to find out whether the question of intention had been duly considered such questioning would not be warranted either by sec. 303 Cr P C or by Rule contained in the H C Rules and Circulars 61 C 256 38 C W N 254 1934 Cal 173 35 Cr L. J. 496 F B

S 305 Verdict in H C when to prevail

——it is competent to a Judge when he disagrees with a under s 305 (3) to give his own opinion on the guilt or innocence of the accused and it is competent for him when he decides to accused not to be retried under s 308 to give reasons relevant to decision 1935 Sind 189 36 Cr L J 1359 1935 Cr C 952

S. 306. Verdict in Court of Sessions when to prevail

——where the Judge is not minded to accept what is obviously and admittedly an inconsistent verdict of the jury he can make further charge to the jury without referring the case to the H. C. for consideration 00 C 729 1933 Cal 640 1933 Cr. C. 1053

——the provisions of ss 306 and 307 are mandatory. The Judge must consider the verdict 13 Lah 573 1932 Lah. 345 1932 Cr. C. 426 33 Cr. L. J 220 I. R. 1932 Lah 181 136 I. C. 5.

S. 307. Procedure where Sessions Judge disagrees with verdict.

——the duty of deciding whether verdict of the jury shall be accepted or not lies upon the Judge who presides at the trial and upon him alone If he decides that he ought not make a reference, there is the end of the matter. *The H C. has no power in its revisional jurisdiction to direct them to make a reference.* 41 C. W. N. 1020 38 Cr. L J 1075. 1037 Cal 540 41 C L J 320 *Diss from.* 1937 Pat 440 38 Cr L J 919 16 Pat. 413

——a disagreement within the meaning of s 307 is one of the conditions precedent to a reference. The Judge is not justified in referring the case to the H. C where his quarrel with the jury's verdict *is that the persons who were found guilty should in fact have been* found not guilty. 37 C W. N 591.

——a Judge is required to refer when he disagrees with the verdict of the jury and also is clearly of opinion that the ends of justice require that a reference should be made The Judge may disagree, and yet [illegible] The Judge may think [illegible] s wrong and still hold [illegible] C. is, *therefore, not* [illegible] under s. 306 to give [illegible] N 1020. 31 Cr. L. J.

[illegible] by evidence the Judge should not make a reference 1933 Pat. 481. 1933 Cr. C. 1010 144 I C. 872. 34 Cr. L J. 828.

——when the jury returns a verdict of guilty and the Judge is *not* certain in his mind of the absolute innocence of the accused and the complete falsity of the complaint and is of opinion that the case is doubtful, he may make a reference 1937 All. 195 38 Cr. L. J. 465

——where the Judge disagrees from the unanimous verdict of not guilty submitted by the jury and makes a reference, he should elicit from the jury their reasons for disbelieving the prosecution [illegible]

of some of the charges but disagrees in respect of other charges.

S 307 Procedure where Sessions Judge disagrees with verdict—*contd*

1933 Cal 665 37 C W N 1180 34 Cr L J 918 1933 Cr C 1104 Sp B

——before reference the trial Judge should appreciate the evidence for himself properly and form his own opinion of the case, so as to see whether it is necessary for the ends of justice to make a reference against the verdict of the jury 62 C 337 1934 Cal 847

——interference with the verdict of the jury except in the case of flagrant and patent miscarriage of justice, is dangerous and liable to lead to the condemnation of innocent people 1933 Cal 665 37 C W N 1180 34 Cr L J 918 1933 Cr C 1104 Sp B

——when there is nothing in the case to suggest that the majority verdict of acquittal is either perverse or unreasonable there is no justification for the reference 63 C L J 140

——though a Judge agrees with the verdict of the jury in respect of some of the charges but disagrees in respect of other charges he should not before reference record an order of acquittal or conviction in respect of any of the charges 1933 Cal 665 37 C W N 1180 34 Cr L J 918 Sp B

——according to Patna H C it is not open to a S Judge to accept the verdict of the jury in one charge and disagree with the jury on another charge and refer the matter to the H C 1935 Pat 357 36 Cr L J 856 1935 Cr C 987

——if the ...
of the verdict ...
perverse 193...
418 1932 Cr ...
not refer a ca...
dissent as to le...
verdict will prevail *The same case*

——the power of reference is not confined to those cases only in which in the opinion of the Judge the verdict of the jury is entirely perverse No hard and fast rule can be laid down The Judge must apply his mind and decide whether the ends of justice demand a reference 1937 Pat 440 38 Cr L J 919 16 Pat 413 19 N L J 320

——if the Judge disagrees with the verdict of the jury on all or any of the charges he must submit the *whole* case 11 Pat 395 1932 Pat 156 13 Pat L T 93 1932 Cr C 273 137 I C 190 33 Cr L J 505 21 C W N 435 *fol*

——if the Judge disagrees with the verdict under s 304 and ... proper course ... C and for ... n order to ... If while ... part of

S 307 Procedure where Sessions Judge disagrees with verdict—*contd*

——the words of sec 307 entitle the Court to exercise any of the powers which it may exercise in appeal It may, after giving due weight to the opinion of the Judge and jury substitute a verdict of guilty for one of acquittal 60 C 427 37 C W N 91 1933 Cal 47 1933 Cr C 61 1935 All 970 1935 Cr C 1193

——the powers given by s 307 (3) are very wide and are not limited by the provisions of sec 423 (2) It is clearly the duty of the H C in the interest of justice, to reverse the verdict of the jury when it considers that the prosecution has failed to establish the charge and that the verd ct of the jury is not sustainable upon the evidence notwithstand ng the fact that the verdict is not perverse or manifestly wrong 1938 All 227 1928 All 207 *Rel on*

——sec 307 makes no distinction between cases of acqu ttal and conviction, in each case the verdict must have been perverse before the H C can interfere But in dealing with the weight and volume of evide ice the cases differ because of the presumption of innocence 1933 Bom 144 34 Cr L J 660 1933 Cr C 331

——in the case of reference by the S J who differs from verd ct of acquittal by jury [illegible] of the jury is perverse [illegible] by Act XVIII of [illegible] against acqu ttal b[illegible] is to see whether [illegible] accused person [illegible] 459 *Rel on*

——on a reference under s 307 the H C has power to direct a retrial 1937 Bom 60 38 Cr L J 327 39 C W N 368 1935 Cal 184 36 Cr. L J 808 62 C 512 1935 Cr C 241 Sp B

——a verdict of guilty" given by the jury obtained in an atmos phere of b as and prejudice and influenced by the private knowledge of the jurors based on what they had heard outside Court cannot be susta ned and where, on the materials ava lable in the case only a summing up for acqittal is possible the H C will acquit the accused and not order a trial 59 C L J 15 1934 Cal 432 35 Cr. L J 1311 1934 Cr C 669

——the discretionary powers of the H C are really untrammelled under s 307 and it can exercise all the powers of appellate court and the whole case is open to it 1937 Nag 33 38 Cr L J 355

S 308 Retrial of accused after discharge of jury

——premature opinion expressed by juror to his friend in private conversation cannot be ground for retrial 1932 Cal 750 33 Cr L J 869 I R 1932 Cal 683 140 I. C 18 1932 Cr C 744

——it is competent for the Judge when he decides to order the accused not to be re tried under s 308, to give reasons relevant to his

S. 308 Retrial of accused after discharge of jury—*contd.*

decision. Among these reasons his opinion as to the guilt of the accused is not excluded, likewise if a Judge decides not to order a re trial because in his opinion the accused is innocent, this opinion would not properly be excluded 1935 Sind 189 36 Cr L J 1359 1935 Cr C 952

S 309. Delivery of opinions of assessors

——this sec requires the Judge to take a statement of the opinion of each assessor orally on all charges and to record them as such 28 S L. R. 295

——the provisions of the sec are imperative and under it the distinct opinion of each assessor on each charge must be taken and recorded, the omission to do so is fatal to the conviction 1934 Oudh 354 35 Cr L J 1066

trial is at an end except for the purpose of giving judgment He has no legal authority to re open the trial and cause fresh evidence to be summoned and take a second opinion from the assessors 35 Cr L J 1002 35 P L R 390

——the opinion of assessors should be based upon a true understanding of the case The Judge is not justified in asking each assessor for his reasons 1931 M W N 1139

S 310 Procedure in case of previous conviction

——it is contrary to the elementary principles of British criminal jurisprudence that any evidence of previous conviction should be allowed to be adduced in the course of a trial save in a few well defined and exceptional circumstances Rule applied to cases under Brothels Act 58 C L J 1 1934 Cal 198 35 Cr L J 722 1934 Cr C 297

S 324 Revision of list

——an order restoring the names of certain persons to the juror's list after the same had been removed from it on objections made and heard, without notice to the parties concerned is an administrative and not a judicial order It cannot be revised under s 439 Cr P C 38 C W. N 363 1934 Cal 487 1934 Cr C 695

S 326 District Magistrate to summon jurors and assessors

——the underlying principle in a trial by jury is to secure an impartial trial by rendering impossible any intentional selection

S 326 District Magistrate to summon jurors and assessors—*contd.*

——the accused having objected to a certain juror in the course of the trial, the Judge discharged the jury, summoned another jury, selected certain jurors by lot and then proceeded with the trial. One of the jurors was discharged because he said he had heard something about the case. Another juror was selected by lot The accused never *objected to any of the jurors but contended in appeal that instead* of summoning gentlemen living in the locality, the Judge should have drawn lots from the total number of jurymen under s 326 Cr. P C, held that sec 326 did not apply to the case and in the absence of prejudice the verdict of the jury could not be interfered with 40 C W N 1411

S. 337 Tender of pardon to accomplice.

——s 337 is available for obtaining the evidence of approvers not in all trials but only as regards trials concerning some graver offences 40 C. W N 876 1936 Cal 356 63 C L J. 307 37 Cr. L. J. 758 1936 Cr. C 583 F B.

——a person acting under compulsion and threat of murder and not with a view to assist the offender, cannot be an accomplice 33 Cr. L. J 567 33 P. L R. 269

——the Cod [illegible] nt a conditional pardon [illegible] he consent of the M can [illegible] These powers ought to [illegible] that the evidence of the accomplice is necessary. But the police have no power to take upon themselves not to charge a person against whom they have evidence simply because they require him as a witness 59 B. 355 1935 Bom 186 36 Cr L. J 937 1935 Cr. C 487

——*jurisdiction is to be determined not by the offence of which the* accused are ultimately found guilty but by the charges with which the trial started 1933 Pesh. 3 34 Cr. L. J 212.

——where a petitioner was never an accused in the previous case and when he gave his evidence there could not have been any misapprehension in his mind that he was giving evidence in a case in which he was made an accused and subsequently discharged there was no implied pardon in his favour 1935 Pat 91 36 Cr. L. J. 500.

——[illegible] inquiry [illegible] P. C. by [illegible] trate for [illegible] vers of a [illegible] 936 Lah. 353 37 Cr L J 515 1936 Cr. C. 294.

——though sec 337 (2) lays down that every person accepting a pardon shall be examined as a witness for the prosecution in the case, *yet when the pardon has been withdrawn it is neither obligatory nor*

S 337. Tender of pardon to accomplice—*contd.*

justifiable on the part of the prosecution to examine such person as a witness for the prosecution in the Sessions Court. 61 C. 399 38

under s 209 Cr. P C. if he thinks no *prima facie* case has been made out. 1935 Bom 70 36 Cr. L. J 499 1935 Cr. C. 132

——s 337 (2 A) cannot be interpreted to mean that the approver must be committed for trial to the Court of Sessions 1932 All 581 1932 Cr C 699 33 Cr L J 802

——the imperative provisions of s 339 (2) make it obligatory on the part of the prosecution to examine an accomplice who has accepted pardon. The fact that he retracts his confession after acceptance of pardon and that his pardon is consequently withdrawn before the Sessions trial, does not make any difference 1935 Oudh 116 36 Cr L J 377 1935 Cr C 206

——the provisions of sub-sec (2 A) would equally apply whoever had been the Magistrate tendering the pardon A Special Magistrate trying a case under Ordinance II of 1932 and tendering a pardon to an approver can proceed with the trial and need not commit the case to Sessions The provisions of the Ordinance overrule those of the Code in so far as they are at variance 60 C 652 1933 Cal 537 34 Cr L J 1023 1933 Cr C 893

——a Special M. trying a case under *Ordinance II* of 1932 and tendering a pardon to an approver can proceed with the trial and need not commit the case to Sessions The provisions of the Code are overruled by those of the Ordinance when they are at variance 60 C 652

——where the promise of pardon or "non prosecution was made to the witness by the Local Govt and it was merely conveyed to him through the District M who did not act *suo mutu* in the matter the case does not fall within the purview of s 337 and the accused is not entitled to have it tried by the Court of Sessions 16 Lah 594 1936 Lah 353 37 Cr L J 515 1936 Cr. C 294

——'trial' in s 337 (3) does not include proceedings in appeal Court of Sessions has no authority after the conclusion of the tri order the detention of the approver until the period of limitatio appeal expires or until the appeal is heard and decided 62 C. 39 C. W. N. 233 1935 Cal 545 1935 Cr. C 937

S 337. Tender of pardon to accomplice—*contd*

——the word 'already" in the amended sec refers to the term when the Magistrate tenders a pardon He can tender pardon at any stage of the trial or investigation If the accused to whom he tenders pardon is already on bail there is no necessity for the approver to be remanded to custody thereafter, but if he is not on bail the M is bound to retain the approver in custody until the termination of the trial. 1932 Sind 40 I R 1932 Sind 174 140 I C 153 33 Cr L. J 906

S 338 Power to direct tender of pardon

——where the accused made a confessional statement to the sub-Magistrate in a murder case in which he was taken as an approver but retracted the same in the committal in the Sessions Court no sanction can be given to prosecute the accused in respect of the contradiction between his confession and subsequent statement 1933 M W N 251

S 339 Commitment of person to whom pardon has been tendered

——the person who s a the sed ... nder th s

cannot be said to be defective because it does not mention the particulars 1936 Lah 409 37 Cr L J 732 1936 C 389

——the certificate of the Public Prosecutor which is required as a ... has to be filed before ... The trial in such a case ... the inquiry before the ... 36 Cr L J 377 1935 ...

——where a pardon tendered to an accused is withdrawn the prosecution is not bound nor justified in examining such person as a ... ntroducing ... C W N ...

... is neither ... the statement made by him will not become inadmissible under s 24 Evi Act 1936 Lah 409 37 Cr L J 732 1936 Cr C 389

——a joint trial of person to whom pardon has been tendered but subsequently withdrawn along with other accused is a serious illegality vitiating the whole trial 35 Cr L J 889 11 O W N 765 1937 M W N 879

——where the actual statement the approver made was clearly induced by promise of pardon and not made under pressure, the statement was admissible under s 339 (2) Cr P. C 1933 Lah. 910 1933 Cr C. 1297

S 339 Commitment of person to whom pardon has been tendered—*contd.*

——where the statement of the approver who has forfeited his pardon is in its general aspect abundantly corroborated and there could be no doubt of the truth of the story told in it, such statement alone would be sufficient evidence for his conviction. 1937 Lah. 689 39 P. L. R 394

——where an approver retracts from his statement in the committing Court and he is tried for the same offence after the forfeiture of the pardon, he can be convicted on his own statement which amounts to a confession It does not require corroboration as an approver's evidence. 39 P. L. R. 930.

——an approver should not be prosecuted for perjury for making contradictory statements when he has reverted to truth in later statement 1932 Lah 307 137 I C 748 33 Cr L J. 485 I. R 1932 Lah 350 1932 Cr C 421

——in a case where contradictory statements have been made on different occasions, sanction cannot be refused unless it is established that the approver made one of the two statements under undue influence 1933 Lah 868 1933 Cr C 1113

——the mere fact that two contradictory statements are made by *the approver cannot in every case be a warrant for directing the prosecution* of the approver for perjury The discretion vested in the H. C must be exercised with extreme caution and the cardinal question for consideration by the Court is whether the confession and the incriminating statement made by the approver were or were not true. 1937 Lah 551 38 Cr L J 1079

S 339-A Procedure in trial of person under s 339

——where in the judgment of the Sessions Judge there was definite finding that the approver had failed to comply with the conditions of the pardon but inverted the order of issues held that there was no irregularity which would vitiate the trial 1933 Lah 910 1933 Cr C 1297.

——*when after perusing the statements of the approver before* the committing Magistrate and before the Sessions Judge the Court is of opinion that both the statements are substantially true, the approver cannot be held to have forfeited his pardon owing to certain trifling discrepancies elicited in cross examination The prosecution must prove that the approver has either wilfully concealed material facts or given false evidence 1935 Lah 799 1935 Cr C 1067

S 341 Procedure where accused does not understand proceedings

——where the accused who was deaf and dumb and unable to understand proceedings was convicted of an offence under s. 454 I. P. C and he had also three previous convictions under s 457 I. P C, s 341 Cr P C. applied to the case and the proper order for the H. C

S 341 Procedure where accused does not understand proceedings—*contd*

to pass was to report the case to the Local Govt for suitable orders and to direct the accused to be detained in custody pending such orders 1935 Oudh 414 36 Cr L J 880 1935 Cr C 984

S 342 Power to examine the accused

——the word inquiry" does not include investigation and the word 'accused persons' must mean one over whom the M is exercising jurisdiction 1937 Nag 17 38 Cr L J 237 F B

——whether s 342 is applicable to maintenance proceed ngs under s 488 Cr P C 36 C W N 380 1932 Cal 488 138 I C 629 I R 1932 Cal 477 1932 Cr C 480 33 Cr L J 640

——it is the duty of the Court before drawing an adverse inference against the accused on any point to call his attention to it and ask for an explanation otherwise the accused cannot be said to have failed to explain and no adverse inference can be drawn against him 37 C W N 514 142 I C 335 I R 1933 P C 65 1933 M W N 409 57 C L J 177 1933 P C 124 34 Cr L J 322 P C

——the effect of non compliance with the provisions of th s sec. depends on the question whether the proceedings have resulted in m s carriage of justice 1932 Rang 190 10 Rang 511 1932 Cr C 932 F B, 57 C 1228 *Ref* where it has resulted in prejud ce to the accused the trial is vitiated 56 C L J 578 1933 Cal 341 1933 Cr C 414 34 Cr L J 521

—— } and an omission to comply [illegible] 34 Lah 648 1934 Cr C 972 [illegible] 1934 Cr C 642, 1934 Lah 63 [illegible] Cr L J 1457 1934 Oudh 4[illegible] [illegible]estion in every case in wh ch a [illegible] *committed is whether in* fact a failure of just ce has been occasioned 1937 Rang 83 : 38 Cr L J 524 F B

——failure to examine the accused again when a Crown witness is examined after the defence evidence is over does not vitiate the conviction if no prejudice is caused to the accused *Such fa lure* at most amounts to an irregularity and is cured by s 537 1934 Sind 67 35 Cr L J 1175 1934 Cr C 636

——omission by the committing M to examine the accused does not vitiate the commitment or render it illegal Such om ssion is no *ground for quashing the commitment* 39 C W N 289 1935 Cal 605 36 Cr L J 1340 1935 Cr C 1022

——s 342 applies to summary trials as well, 1938 Sind 70 1934 Lah 96 35 Cr L J 1394 1935 O W N 1042 36 Cr L J 1303 [illegible] he provisions of s 342 is a mere [illegible] *unless the accused has been* [illegible] 7 36 Cr L J 1290 1935 [illegible]

S 342 Power to examine the accused—*contd.*

——sec 342 must be read subject to the provisions of sec. 205. Where M dispenses with the personal attendance of the accused and permits him to appear by his pleader, the M is not bound to question the accused personally 1934 Bom 212 35 Cr L J 1035 1934 Cr C 759

——s 342 cannot be interpreted to mean that it is necessary to examine the accused only if he offers to produce defence 1936 O W. N. 215 37 Cr L J 408

Cr L J 1322 1934 Cr C 722

——if an accused in a summons case admits that he has committed the offence the M. may convict him under s 243 without hearing the complainant and taking his evidence In such a case it would be unnecessary to examine the accused under sec 342 1934 Lah 96 35 Cr L J 1394

——it is the duty of the Court to ask questions and it can only be in exceptional circumstances that a M should find himself obliged to accept any suggestions from the prosecuting counsel as to questions to be put 35 Cr L J 1457 1934 Nag 213

——sec 342 does not contemplate joint statement by the accused 1937 Sind 304

——the written statement under sec 256 (2) is different from the personal explanation contemplated by sec 342 It is open to a M to requisition the presence of the accused in a warrant case 1934 All. 693 35 Cr L J 879 1934 Cr C 866

——where long after the closing of the case the M examines a witness under sec 540 but does not further examine the accused under sec 342, the trial is vitiated 56 C L J 583 1933 Cr. C 419 34 Cr L J 549 1933 Cal 347. but where after the arguments were commenced one prosecution witness was recalled and some questions were put to him the non compliance with the formalities of sec 342 does not vitiate the trial 57 C L J 57 1933 Cal 594 1933 Cr C 958

——where the accussd has already been examined at the proper time but subsequently after the closing of the defence evidence the Court takes additional evidence under s 540, it is not necessary to re examine the accused. 1937 Pat 246 38 Cr L J 657 1937 Nag 285 38 Cr L J 1058

——the omission to examine the accused a second time in *de novo* trial, does not when no new matter is introduced into evidence and when there is nothing in the evidence about which accused has not already given his explanation or in the absence prejudice, amount to an illegality which vitiates the trial At best

S. 342 Power to examine the accused—*contd.*

an irregularity curable under s 537. 58 M. 427 36 Cr. L. J. 307. 1935 Mad 22

——an accused was examined after the examination of prosecution witnesses, charge was framed, then the prosecution witnesses were recalled at the instance of the accused person and cross-examined it is arguable that the s 342 does not require the examination of the accused person after such cross examination, because when an accused cross examines the witnesses after charge, he does so presumably as a part of ... to elicit further ... if re-examination ... omitting to do so ... 37 Cr. L J. 710 ...

... to justify conviction 1936 Mad 629 37 Cr. L J. 1074, 1936 Mad. 628 37 Cr L J 1107 1936 Cr. C. 762.

——it is not sufficient if the Judge merely puts to the accused the usual formal questions Specific questions about adverse circumstances should be put. 59 M 622 1936 Cr C 818

——an accused person when being examined under this sec, should not be confronted with the statement which he had made to the police for the purpose of being discredited on account of any contradiction 1935 All 717 36 Cr L J 773 1935 Cr C 919

——a Magistrate or a Judge cannot question an accused person so as to get from him an admission of the facts which are not proved in the evidence Nevertheless if an accused person does in fact make such an admission and it is clear that he has not been intimated and that the admission was made with a full understanding of what he was saying, it should be taken into account against him in the same way as any other confession made before a M can be so taken 1935 Rang 509 1935 Cr. C 1295, (1923 Lah 225 29 C. 49) *Expld and Diss from* (27 M 238, 1916 Mad 407) *Dist*

——in cases where an accused person makes some statement during the course of the trial, which is interpreted as a plea of guilty, the Court should record the exact words used, specially when a statement is made in answer to questions put by the Court under s 342 39 C. W. N ...

S 342 Power to examine the accused—*contd*

——the failure of the Judge to question the accused about a confess on which forms an integral and substant al part of the prosecution case is a serious omission not covered by s 537 1938 Sind 97, 1937 Sind 221 *Rel on*

——an accused person can only be examined under the provisions of s 342 if he is willing to answer questions put by the Court If he declines to answer questions and prefers to put in written statement, there is no violation of the provisions of that sec 1937 Nag 67 38 Cr L J 354

——it is not a question of what explanation the ingenuity of lawyers can invent Such imaginative suggestions are no substitute for the taking of a statement from the accused 1936 Pat 626 38 Cr L J 2

——the task to comply with the provis ons of this sec is so d fficult one that when the accused is represented by counsel it is often in his interest that the Judge should formally ask a general question and leave the accused s counsel to offer explanations on h s behalf in the way most favourable and least dangerous to him 1932 M W N 801 1933 Mad 233 34 Cr L J 481

——where the accused confessed gu lt but not intended it to be recorded held that the whole statement was rightly recorded 56 B 434 1932 Bom 279 34 Bom L R 571 1932 Cr C 391 33 Cr L J 613 138 I C 503 I R 1932 Bom 338

——the Judge has power to refuse to record irrelevant answers and if necessary may prevent the accused making lengthy irrelevant answers 1933 All 690 1933 Cr C 1202 34 Cr L J 967

——when after the accused has been exam ned under this sec the investigating officer is examined the Mag strate should give the accused opportunity under this sec to explain the evidence recorded against him 1932 Sind 165 1932 Cr C 743

——the ' accu ed referred to in the sec means an accused person under trial. Persons who are shown as accused in the charge sheet but who are neither under arrest nor sent up for trial and against whom no process was ever issued are not accused persons with n sec 342 The evidence of such persons is not therefore inadm ssible in evidence merely because they are shown as accused in the charge sheet although their ev dence s ent tled to very l ttle we ght 59 B 355 1935 Bom 186 36 Cr L J 937 1935 Cr C 487

S 344 Power to postpone or adjourn proceedings

1932 S nd 214

se is to

riods 1933 Si

1933

——s 344 has no appl cation to completed proceedings 1931 All 1931 Cr C 999 12 Pat L T 671

S 345. Compounding offences—*contd.*

——a Court of revision can allow and accept a compromise under cl (5 A) of sec. 345 An accused person who has been committed for trial or convicted cannot claim as of right that the case should be withdrawn and that he must be acquitted because the case has been compromised 1934 Sind 122 1934 Cr C 963.

——where in respect of a conviction under sec 324 I P. C. the accused preferred a revision to the H C and the complainant filed a petition alleging that the parties, who were relatives, had compromised the case and they appeared in person and urged that the Court should grant permission to compromise the offence, the Court might accept the compromise between the parties under s 344 (5 A) and acquit the accused. 1934 Lah 317 35 Cr L J 579

——where an accused was charged for wrongful confinement of two persons but one of them alone compounded his case with the accused and the M ignored the fact and the charge was framed for wrongful confinement of two persons and acquitted the accused, held that the acquittal was in contravention of law, in as much as the charge was framed in respect of two persons, and only one of them had compounded and not both as required by s 345 1937 Nag 72 36 Cr L J. 334

S 346 Procedure of Provincial M when he cannot dispose of

——the District M. has no power to cancel or set aside an order of Sub-Divisional M transferring a case referred to him for transfer under s 346 1936 Nag 220 1936 Cr C 937

S. 350 Conviction or commitment on evidence partly recorded by one M and partly by another

—— [illegible] Bench of [illegible] bsequently, [illegible] ar it The [illegible] 62 C 266 39 C W N. 57 1935 Cal 287 36 Cr L J 857.

——an inquiry preliminary to commitment to the Court of Sessions does not come under proviso (a) to sec 350 (1); consequently when the [illegible] latter is [illegible] he frames the charge 42 C W. N. 224

——proviso (a) to s [illegible] and other preventive secs. [illegible]

[illegible] nces [illegible] used [illegible] fence

S 350 Conviction or commitment on evidence partly recorded by one M and partly by another—*contd*

present in Court for the hearing of the case A Magistrate who hears a case *de novo* after another M had framed charges does not act illegally and he is also competent to pass an order of discharge and can pass an order of compensation under sec 250 Cr P C 1937 Bom 55 38 Cr L J 250, trial of an accused person for the purpose of s 350 does not commence at the charge, but commences as stated in Chap XXI when the accused appears before the Court 1934 Sind 106 35 Cr L J 1261

——an accused has not the right to claim *de novo* trial when the case is at the stage of inquiry But though the accused s right under proviso (a) arises only when the case is at the stage of trial, yet the M is not so bound and may recommence the case even when it has not reached that stage [illegible]

——a *de novo* trial is not strictly speaking a new or fresh trial All that it means is that the accused shall have the right to have all or any of the witnesses re summoned and re heard by the new Magitrate It does not mean that what had taken place before is completely wiped out or that the accused should renew every application which he had made before he claimed that privilege 1937 Mad 448 38 Cr L J 537

——there is nothing illegal when the previous depositions are treated as part of the record at the express wish of the accused s counsel and after due co sideration by the Court whether any prejudice would arise to the accused by such action 1934 Nag 209 1934 Cr C 980

——it is desirable for the proper administration of justice that normally, the M who passes the final order should be the M who has heard all the evidence The accused has no right to insist that there shall not be a *de novo* trial or inquiry 1937 Nag 147 38 Cr L J 697

——the Magistrate as well as the accused have a privilege under s 350 The M may decide to recommence the trial or inquiry and in such case the accused cannot object to the examination afresh of any witness An accused cannot demand a *de novo* trial all that he can demand is that the witnesses whose evidence has already b recorded or any of them be summoned or reheard But if after his demand for rehearing of witnesses he does not want any parti witness to be heard the M has no power to order that the ev that witness may be taken afresh 1935 Mad 318 36 Cr L. and it has also been held that where the accused does not wish

S 350 Conviction or commitment on evidence partly recorded by one M and partly by another—*contd*

a fresh trial he can insist upon his case being decided upon the evidence already recorded by the first Magistrate 1934 Oudh 324 35 Cr L J 1147

——under this sec the inqu ry or trial has to be commenced *de novo* if the succeeding M in his discretion decides that it should be so with the necessary implication that the charge already framed has to be ignored and is no longer in force But that is not the case when the case is re heard at the request of the accused 1936 Nag 153 37 Cr L J 983

——a *de novo* trial granted by a succeeding M has the effect of cancelling the proceedings before his predecessor and if the case is retransferred to the original M he cannot proceed with the case from the state at which it was left by him even though the case may not have proceeded beyond merely ordering *de novo* trial 1936 Nag 220 1936 Cr C 937 1934 Mad 475 35 Cr L J 1363 57 M 1019

——where the w tnesses are not summoned at the instance of the accused for cross examination but are summoned for examination in a *de novo* trial, the order in which these witnesses are to be exam ned n chief rests at the discretion of the prosecution 1934 Nag 209 1934 Cr C 980 1933 Cal 189 *Dist*

——s 350 relates to jurisdiction and error in jurisd ction is not a mere irregularity 1936 Sind 40 37 Cr L J 455

——the trial of a criminal case is over as soon as the M has [illegible] The mere [illegible] a M [illegible] and the [illegible] ity and [illegible] 51 34 Cr L J 117 1933 Cr C 365

——where after the prosecution case was heard and charge framed the M was transferred the succeeding M cannot ignore the charge The right of the accused then is to be found in proviso (a) to s 350 (1) He is only entitled to have any of the w tnesses recalled and reheard and not to a *de novo* trial 1933 Mad 841 1933 Cr C 1518 38 M 585 *fol*

——where a case is transferred to another M on the applicat on of complainant after most of the principal prosecution witnesses have been heard and on the accused not claiming a *de novo* trial the new M convicts the accused without hearing the principal witnesses for the prosecution the trial in unsatisfactory This state of affairs follows from the inequ tous s 526 Remedy for this is suggested by confin ng s 526 to transfers made before the commencement of trial 37 C W N 982 1933 Cal. 582 34 Cr L J 958 1933 Cr C 953

S 350 Conviction or commitment on evidence partly recorded by one M and partly by another—*contd*

——it is a general principle of law that evidence taken by one M is not evidence in a trial before another M unless the law expressly makes it so Therefore when a case before a Second class M has been stayed under s 346 and submitted to a First class M the latter is bound to try the case *de novo* The failure to rehear the prosecution witnesses examined before the Second class Magistrate vitiates the whole trial 1933 Sind 191 34 Cr L J 740 1923 Mad 327 *Ref*

——a case against the accused was taken up by the First class Bench for summary trial charge was framed and plea was recorded Then the case was transferred to a Second class Magistrate who discharged the accused under s 259 Cr P C owing to the absence of complainant The question being whether a second compaint was maintainable held that the Second class M having no jurisdiction to try the case summarily had no power to act upon evidence heard and the charge framed at the summary trial and the order of discharge did not amount to acquittal within the meaning of sec 403 1932 Mad 505 33 Cr L J 653 1932 Cr C 509

S 350-A Changes in constitution of Benches

——the presence of all the M[illegible]
all hearings is indispensibly nec[illegible]
otherwise the conviction will be [illegible]
140 I C 122 33 Cr L J 8 [illegible]
207 33 Cr L J 200 1932 Cr C 152 1932 All 127 1932 A L J 42 135 I C 835 I R 1932 All 99 1934 All 144 1934 Cr C 210

S 351. Detention of offenders attending Court

——when a new accused is added he is not entitled as of right to have the case tried by another Court under s 191 and the M can act under s 131 1934 Rang 193 35 Cr L J 1312 1934 Cr C 887

S 352. Courts to open

——where a M conducts a trial in camera in the exercise of his own discretion and no objection is raised to such procedure the proceeding cannot be upset except on the ground that one of the parties is prejudiced by the case being not tried in open Court 1936 Rang 471 1936 Cr C 961

S 353 Evidence to be taken in presence of accused

——the trial is a nullity where the prosecution witnesses examined in chief when the accused person was absent even [illegible]
they have proved the prosecution case in their cross ex[illegible]
was conducted in his presence 1935 Oudh 488 36 Cr L [illegible]
1935 Cr. C 1283

S 355 Record in summons case etc by first and second class M

——s 355 has no application to the summary trial of a case under Chap XXII of the Code 1935 Rang 106 36 Cr L J 892 1935 Cr C 315

——in summary cases the recording of evidence is governed by ss 263 and 264 and s 355 has no application at all to summary cases In such cases the trying M is not bound to record any notes of the evidence 1934 Bom 157 35 Cr L J 841 1934 Cr. C 544 49 A 261 preferred to 48 C 280

——there are certain offences wh ch a M may try summarily under ss 260 Cr P C If he does so try them he is not required to make any memorandum of the evidence at all If he does not try them under s 260 but tries them in the ordinary course he is required under s 355 to make a memorandum He is not required to record the evidence in the language of the Court or have it so recorded 1936 All 319 37 Cr L J 710 1936 Cr C 476

——a M is not entitled to attend to other work during the hearing of a case and to plead that other work as the reason of h s inab l ty to comply w th regard to the recording of evidence The irregularity is not of a technical nature 1937 Oudh 126 38 Cr L J 150

S 356 Record in other cases outside Presidency Towns

——where the Judge does not take down the evidence of w tnesses in writing or make a memorandum of the substance of what witnesses state there is non compliance with the provisions of sec 356 (3). But if the evidence is taken down in the presence and hearing and under the superintendence of the Judge and the deposition is read over to the witnesses and admitted to be correct and there is no suggestion that the record is not correct and the accused is prejudiced this irregularity does not vitiate the trial but is cured by sec 537 61 C 399 38 C W N 659 1934 Cal 634 35 Cr L J 1479 1934 Cr C 929

——where a Court is composed of more than one Judge the deposition need not necessarily be signed by all the Judges of the Court 15 Lah 407 1935 Lah. 160

——the mere fact that imperative rule of procedure has been broken is not enough to v tiate the trial or proceeding 1931 All 3 53 A 172 129 I C 269 32 C L J 372 1930 A L J 1504

——where in an inquiry under s 145 the M failed to comply with provis ons of s 356 in recording evidence, held that the error in procedure d d not vitiate the inqu ry 1931 All 2 32 Cr. L J 368 I R. 1931 A 137 129 I C 265 25 M 61 *Dist*, (20 A L. J 874 3 Rang 139) *Approved*

S 360 Procedure in regard to such evidence when completed

a
rec
pe
in recording the evidence and to give the witness an opportunity to correct any mistake made by the writer thereof 15 Lah 407 1935 Lah 160

S 362 Record of evidence in Presidency Magistrate s Courts

——as the appeal depends on the sentence a M should make up his mind before l e has heard the evidence as to whether he is likely to pass a sentence which will make it appealable Although the prosecution is quite right and acts properly in not informing the M about the previous conviction of the accused the practice being founded on a desire to see that the accused gets a fair trial the prosecution may without impropriety indicate to the M that it is desirable that the evidence should be recorded in the case An intention of that sort cannot prejudice the trained mind of a M and the difficulty of finding after hearing the case that he ought to have recorded the ev dence can be saved But when a M finds that a longer sentence giving a right of appeal is necessary but he has not recorded the evidence, his only course is to record the evidence afresh 1935 Bom 37 1935 Cr. C 71 36 Cr L J 527

——in cases in which an appeal does not lie, the Presidency Magistrate is not bound to record the evidence and the H C cannot interfere in the matter 56 B 200 1932 Bom 180 I R 1932 Bom 236 137 I C 188 1932 Cr C 239 10 Bom L R 201 *Dis*,

——in a summons case such as a maintenance case under s 488 Cr. P C it is not necessary for the Presidency Magistrate to record the evidence 33 Cr L J 461, I R 1932 Bom 242 137 I C 27 34 Bom L R 276 1932 Bom 179

S 364 Examination of accused how recorded

——a M recording a confession must record word for word the

1934 Cr C 1322 and where there has been a clear and deliberate non compliance w th ss 342 and 364 Cr P C no question of prejudice arises and the irregularity is not curable under s 537 1934 Nag 213 35 Cr L J 1457

——where the M has not put the necessary preliminary question to the accused to satisfy himself that his statement was voluntary

S 364 Examination of accused how recorded—*contd*

... P C provided the omission ... ce on the merits The Court ... that the confession was "duly made ... If the questions were not put at all the confession is not 'duly made' but it is not necessarily irrelevant. The Court may satisfy itself that there was no inducement or threat 1933 All 81 35 C L J 385 56 A 302 F B

——a confession which bears neither the signature of the M nor of the accused is one not in strict accordance with s 364 But the fact that it had been duly made by the accused can be proved by further evidence under s 533 *Above case*

——the provisions of this sec are not applicable to summary trials, but this only means that the examination of the accused person need not be recorded in full including every question and every answer, but it is clear from sec 263 cl (g) that some notes must be made of the examination of an accused person in a summary trial 1935 O W. N. 1042 36 Cr L. J 1303

——sec 364 (1) does not apply to summary trial and a M. is not required to record the statement of the accused in full and in the language in which it is made So where after the closing of the prosecution case the accused are examined and their statements recorded in English and signed by the accused and such records are duly brought on the record there is sufficient compliance with the law The mere fact that the statements of the accused in the Vernacular language are put in only later on does not amount to an irregularity vitiating the trial 39 C W N 1306

——when the record has been properly completed by the Court the law requires that the accused shall sign it in order to show that it is conformable to what he declares is the truth If he refuses to sign it there can be no doubt that he is obstructing the process of the Court and that he is liable to punishment under s 180 I P C There is no exemption on the ground that the accused person has refused to answer questions or that he has refused to make a further statement. 1935 All 652 36 Cr L J 1098 1935 Cr. C 652

——where the accused made a statement before a Magistrate beginning to say that he was guilty but the body of the statement ... of the ...

1073

S 366 Mode of delivering judgment

——there is no provision which requires that the High Court after pronouncing a judgment in open Court should date and sign the same. The criminal appeals disposed of by a Judge by the delivery of judgment

S 366 Mode of delivering judgment—*contd*

in open Court and taken down by his judgment writer must be deemed to have been finally disposed of by him Omission to initial the fair copy of the judgment is not a serious defect 55 A 132 1933 All 40 34 Cr L J 703

——a judgment delivered by a Sessions Judge after handing over charge to his successor and vacating his office is without jurisdiction and bad in law 1932 All 582 1932 Cr C 700 1932 A L J 753

——a composite in three cases is bad 1932 Lah 664

S 367 Language of judgment, contents of judgment.

——it is absolutely necessary that the heads of charge should show clearly and distinctly what the exposition of the law actually was 41 C W N 508 1937 Cal 266 38 Cr L J 767

——a judgment is not required to be a resume or reproduction of all the evidences on record A Court is entitled to and should cite such important evidence as it considers necessary to support a decision on material points arising for consideration 1937 Cal 99 38 Cr L J 818 Sp B

——this sec requires that a judgment must contain (1) the points for decision (2) the dec s ons thereon and (3) the reasons for the decision and therefore a judgment that I have gone through the record The conviction u der sec 419 I P C is sound The fine inflicted of Rs 30 only is very l ght I see no reason to interfere and dismiss the appeal is not a proper judgment 1933 Nag 328

an d ma h been l d d d d l

——comentar es on la are er sef l th ng h t be — h d

1093

——s 367 must be interpreted reasonably and so long as the appellate Court below writes a judgment from which the H C can gatl er what tl e decision of tl e appellate Court really is that in the mojority of the cases ought to be suffic e t If t is possible for the H C to arrive at an understanding of what has been found in the Court below it is not necessary that it should capr ciously set aside

h d f h C t ommei t on it w th any severe on the H C to hold that the and the matter reheard Cr L J 982 1935 Cal pon the conduct of a

in a case and comment severely if the ev dence produced befor

S 367. Language of judgment, contents of judgment—*contd*

warrants such comment. But he is not entitled to use his personal knowledge during the conduct of a case and cannot and should not comment on any party in that case as the result of information received not in the case itself but from outside sources 1935 All 904 1935 Cr. C 1063 36 Cr L. J 1474

——the record of heads of the charge to the jury which is required by proviso to s. 367 Cr P C ... on the part of the Sessions Judg... to decide whether the evidenc... jury. In the absence of a short... charge is or can be available The only possible alternatives are equally wrong and dangerous Either the charge must be written out in extenso in anticipation of the end of the trial or it must be compiled afterwards from memory, either of which would not be an accurate reproduction of what the Judge actually said to the jury. 39 C. W. N 924 36 Cr L J 1246 1935 Cal 534 62 C. 911.

——under s 367 (5) proviso it is not necessary for the Sessions Judge to record the heads of re charge in respect of the fresh charge under particular section when the fresh charge is the same as the original charge already recorded and the omission to do so is not fatal to a conviction 60 C L. J 45

——though a M may have to consider facts in relation to a particular individual who ... fairly the ... witnesses ... being giv...

an accus... prejudice ... his order tended to incul... rather than exculpate 1938 Sind 103

——it is a serious matter for the H C. to expunge remarks from ...

... in dealing with appl... ...'s judgment as it stands

S 369 Court not to alter judgment

——s. 369 relates only to alteration of judgment. But the priciple therein applies also to final orders in the nature of judgments and not

S 369. Court not to alter judgment—*contd.*

to orders which are not in the nature of judgments. An order of transfer passed without notice cannot be regarded as an order in the nature of judgment which is one passed after full inquiry and after hearing both parties. 1935 All 815 36 Cr L J. 918. 1935 Cr. C. 917.

——where an appeal ...

Cr. C. 254.

——an application to review an order of discharge passed by a M. is incompetent and contrary to the provisions of s 369 Cr. P. C. 1935 All. 59: 36 Cr L J. 128 1935 Cr. C 38.

——s 369 comes into operation only when the Court has signed its judgment. In the case of the H. C. exercising its ordinary original criminal jurisdiction, no judgment nor any other pronouncement of its decision is signed until the warrant is signed by the Presiding Judge. In proper cases, therefore, the Judge can review his sentence, though already pronounced in court so long as the warrant has not been drawn up and signed 1936 Bom 193 37 Cr. L. J. 753. 1936 Cr C. 573

——no review lies under s. 561-A against an order of the H. C. dismissing a criminal revision application, when it has been signed and sealed 35 Cr. L J 1485.

——s 561-A neither modifies the pro... clothes ... C has ... for the ... diction ... ounsel. ... 1935

I at 420 · 1935 Cr C. 1123

——when an appeal is summarily dismissed deliberately and openly by a Co...

Cr. P. C The judicial powers of the Chief Justice are not greater t nor different from but exactly the same as those of any other Ju 38 C. W. N 25 34 Cr L. J 1100 1933 Cal. 870.

S 369 Court not to alter judgment—*contd.*

——after a M. has passed an order of reference under s 438 recommending that the conviction and sentence passed by the Bench of Magistrates should be set as de he has no power to revise or rev ew his order 1934 Oudh 85 35 Cr L J 417 1934 Cr C 255

——s 369 applies only to judgments and not to complaint even when it is made by a Court under s 476 Cr P C and it does not therefore amount to a bar against a Court altering or reviewing its complaint under s 476 1937 All 76 38 Cr L J 318

——where a M cancelled his previous order for maintenance under s 488 passed in favour of the wife when the husband informed the M that he had obtained a decree for restitution of conjugal rights without telling the M that appeal against the decree was pend ng, and the *decree obtained by the husband was subsequently set aside in appeal* [illegible] held that [illegible] o such [illegible] under [illegible] ta ned by fraud practised on the Court is a nullity and the criminal Courts have power to ignore orders passed either under a mistake or fraud 1937 Cal 334

S 370 Presidency Magistrate's judgment

——the record kept by the Presidency Magistrate should furn sh some indicat on that he has considered the evidence and arguments critically Mere recording evidence and saying that the case is proved are not sufficient but the defect is curable under s 537 36 C W N 852 139 I C 244 33 Cr L J 729 I R 1932 Cal 857 1932 Cr. C 632

——in a case involving a fine of less than Rs 200 a Pres dency M need not write a judgment but should only make a brief statement of the reasons for the conviction But when he writes a judgment he must discuss the prosecution evidence 37 C W N 368 60 C 656 1933 Cal 532 34 Cr L J 1059

S 374 Sentence of death to be submitted by Court of Sessions

——the restriction contained in s 418 as regards appeals in jury cases to be confined to matters of law does not apply to reference under s 374 Cr P C 1932 Pat 302 1932 Cr C 774 13 Pat L T 440

——in cap tal sentence cases though the H C must rely upon the jury's verd ct if it answers a reasonable test but where there is no sufficient ev dence to warrant the conviction it can set aside the convic tion itself without directing a retrial 1933 Cal 426 1933 Cr C 621 34 Cr L J 533 37 C W N 595 F B

——where the jury are unan mous the H C would be reluctant to d ffer from the r opinion apart from strong reasons inducing them to do so 65 C L J 423

S 374 Sentence of death to be submitted by Court of Sessions—*contd*

sentent
their
weight to the verdict
When retrial should be
9 64 C L J 154 40 C W N 432 1936 Cal 73 37 Cr L J 394

S 375 Power to direct further inquiry or additional evidence

——this sec is not meant to enable a Court to remedy an important error in procedure which might have been calculated to prejud ce the accused in the trial a d which in fact causes the trial to be vitiated 1935 Sind 145 36 Cr L J 1161 1935 Cr C 753

S 376 Power of H C to confirm sentence or annul conviction

——accused was convicted of murder and conspiracy to commit daco ty The conv ction on the charge of murder was set as de on the ground that the charge to the jury was defective It was found that the occurrence took place nearly two years before therefore the witness would be liable to confuse what they had heard with what they had

——sec 376 is to be read w th sec 418 (2) wh ch is an exception to the general rule that an appeal on a trial by jury will lie only on a matter of law Sec 418 (2) gives a person convicted on a verdict of jury at the same trial w th the person sentenced to death the same right to appeal on question of fact as well as law 1937 Sind 162 38 Cr L J 808

S 377 Confirmation or new sentence to be signed by two Judges

——a i ew sentence or order referred to n sec 377 Cr P C refers to the powers of variation of the senter ce etc confirmed by s 376 1937 P C 119 41 C W N 741 38 Cr L J 498 39 Bom L R 966 P C

——where the Court consists of two or more Judges and the order of confirmation of ser tence of death is only made passed and signed by one of tl em the sentence of death is i ot validly coi firmed but remains submitted to the Court wl ich has to d spose of the same under ss 375 to 379 Cr P C 1937 P C 119 41 C. W N 741 38 Cr. L J 498 39 Bom L R 966 P C

S 380 Procedure in cases submitted by M not empowered to act under s 562

——where after conviction the case was referred to a Magistrate for action to be taken under s 562 (1) the latter should dispose of the case in the manner provided by s 380 When an accused person appears before the M under s 380, he can only be treated as a convicted person and a M acting under that section cannot set aside the conviction and acquit him 1933 Mad 728 34 Cr L J 1045 1933 Cr C 1312

S 383 Execution of sentence of transportation or imprisonment in other cases

——antedating of a sentence of imprisonment was contrary to the spirit of ss 383 and 397 1933 Rang. 28 34 Cr L J 447 1933 Cr C 275

S 386 Warrant for levy of fine

——s 386 (1) (a) does not authorise the attachment of any property other than the movable property of the offender Consequently the undivided share in the movable property of a joint Hindu family cannot be attached because it cannot be seized without at the same time seizing *the undivided shares of the members* 13 Pat L J 549 I R 1932 Pat 281 1932 Pat 292 1932 Cr C. 764 140 I C 101 33 Cr L J 872 **Sp B**

——movable property in which the offender has only an undivided share is not liable to attachment by seizure and to sale 1933 Cal 401 1933 Cr C 579 1933 Cal 402 1933 Cr C 580, 37 C W N 567 I R 1933 Cal 334 143 I C 97 20 C 478 *Rel on*

——movable properties which belonged to the joint family of which deceased offender was a member and which on his death passed by survivorship to the other members of the family cannot be attached 1932 Pat 301 140 I C 72 I R 1932 Pat 290 33 Cr L J 958 13 Pat L T 536 1932 Cr C 773 **F B**

——the proper procedure to proceed against the undivided interest of the coparcenar in movable property belonging to a Hindu joint family is that prescribed by Or 21 R 47 C P C and the Court can either appoint a reciever or issue a prohibitory order in respect of the delinquent s share but it cannot attach such property by way of seizure 55 M 1041 1932 Mad 538 1930 Cr C 556 33 Cr L J 622

——where in execution of an order for costs in proceedings under s 145 Cr P C some properties were seized under sub cl (a) and a claim was preferred and it appeared that there was some dispute between the claimant and the defaulter as to whether that was a separate property of the claimant or a joint property of both the better course would be to proceed under sub cl (b) 13 Pat L T 215 33 Cr L J 671 1932 Cr C 493

——when any property is attached under this sec and a third party prefers claims, the Magistrate should stay the sale to give time

S 386 Warrant for levy of fine —*contd.*

to the claimant to establish his rights thereto in a Civil Court If however the M decides againt the claim the remedy of the aggrieved party lies in Civil suit only and not in criminal revision 56 B 364 1932 Bom 476 33 Cr L J 805 1932 Cr C 604

——where family property is attached in order to recover fine imposed on a co-parcener the onus rests on the persons claiming the property as joint to prove the same 55 M 104 1932 Mad 538 33 Cr L J 622 1932 Cr C 566

——where a M did not himself make an inquiry into the objection to an attachment but merely acted on the police report held that the procedure was wholly unwarranted 1933 Pat 698 1933 Cr C 1551

——where in pursuance of an order of attachment against an absconder a decree in favour of the joint family of the offender was attached and the absconder was subsequently arrested and fined and the fine was realised by attachment under s 386 of the sum already attached under s 88 and credited to Govt and the other members of the offender s family applied for refund of the fine on the ground that the attachment of the property of the joint family to realise a fine imposed on an individual member was illegal held that the attachment under s 88 ceased when the subsequent attachment under s 386 was effected the subsequent attachment ceased to exist when the amount of fine had been handed over to the Crown the M had jurisdiction to inquire into a claim under s 386 only between attachment and final crediting of the amount of fine to the Govt and not thereafter and as the attachment had ceased before the claim was made the M acted rightly in objecting to the application, held further that the words "summary determination in s 386 (2) indicates that the claim should be made promptly and only so long as the attachment subsists 1934 Pat 181 35 Cr L J 682 1934 Cr C 370 **Sp B**

——under s 386 Cr P C and the rules made thereunder only the property of the offender can be seized and not of any other person But a warrant for the realisation of the costs of additional police quartered in village apportioned on the inhabitants of that village the tax having been assessed on a joint family in the name of a member thereof may be executed by attachment of the entire joint family property 1935 Pat 214 36 Cr L J 714 1935 Cr C 577

——when an officer is entrusted with a warrant to attach the property of certain persons his first duty is to ascertain by all means possible what property belongs to that person which is liable to be attached Having satisfied himself that certain property belongs to that individual it is his duty to attach that property unless some objection is raised which raises in his mind a reasonable doubt that th property does not belong the person against whom the warrant h been issued 1935 Pat 214 36 Cr L J 714 1935 Cr C 577 **Sp**

——*Quære* —whether an officer entrusted with the execution warrant addressed to him can, under s 386 Cr P C, delega

S 386 Warrant for levy of fine—*contd*

function to his head clerk 1935 Pat 214 36 Cr L J 714 1935 Cr C 577 **Sp B**

——the proviso to s 386 (1) appl es in terms only to the issue of a fresh warrant and does not requ re the withdrawal of a warrant already *issued before expiration of the sentence in default* of payment In dealing with existing warrants the Courts should however follow the pol cy which seems to have insp red the proviso In general an offender ought not to be requ red both to pay the fine and to serve [illegible] 1934 [illegible]

Cr C 278

——an accused was sentenced to pay certa n amount as fine or in default to undergo imprisonment He surrendered h mself and stated that he was unable to pay it Thereupon he was comm tted to jail to undergo the rigorous imprisonment imposed On the same day the Judge made an order that warrant should be issued to the Collector [illegible] cord ng to [illegible] th [illegible] to [illegible] he whole of imprisonment in default 1935 Cal 546 36 Cr L J 1207 1935 Cr C 938

——except in special cases it is both undesirable and unfa r to seek to real se a fine when the sentence ordered to be served in default of payment of the fine has already been served in full and the prov so to s 386 Cr P C is intended to deal with cases where for some sufficient reasons the authorities have not been able to realise the fine before the default sentence has been served 1936 Cal 149 40 C W N 604 37 Cr L J 524 1936 Cr C 291

——G as a Special M under s 23 of the Ord nance II of 1931 passed a sentence of fine and was succeeded by S as Sub Divis onal M the Ord nance Court com ng to an end S not being successor of G as a Special M he could not execute the ser tence of fine by issue of warrant of attachment 40 C W N 604 1936 Cal 149 37 Cr L J 524

S 388 Suspension of execution of sentence of imprisonment

——whenever a sentence of imprisonment is passed in add tion to a sentence of fine even if the sentence of imprisonment is a nominal sentence only the provis ons of sec 388 have no *application* and the

S. 388 Suspension of execution of sentence of imprisonment—*contd.*

execution of the sentence of imprisonment in default of payment of fine cannot be suspended 11 Rang. 451.

——the provisions of sub-sec. (2) refer to an order for payment of money which order is not a sentence passed upon an accused person. There is a clear distinction between sub-section (1) which refers to a sentence passed in a trial and sub-sec. (2) which refers to an order made by a Criminal Court for the payment of money but which is not a punishment inflicted on an offender for a criminal offence. The latter refers to cases like that of the payment of compensation under sec. 250 Cr. P. C or the payment of the penalty due on a bond under sec 514. 11 Rang. 451.

——this is the only sec in this Code by which a fine can be ordered to be realised by instalment But this sec does not apply to a sentence of rigorous imprisonment for a day besides fine 56 C. L. J 73

S 390 Execution of sentence of whipping only.

——where a youthful offender is for one offence ordered to be detained in a Borstal Institution or a Training School and for another [illegible]

S. 391 Execution of sentence of whipping in addition to imprisonment.

——on a conviction under sec 376 read with sec 511 I P C, the Court passed a sentence of two years' rigorous imprisonment and further sentenced the accused to whipping of twenty stripes after the sentence of imprisonment had been undergone, the order relating to sentence of whipping contravened sec 391 Cr P C 1934 Pat 551 1934 Cr. C 1195.

S 393 Sentence of whipping not to be executed by instalments

——[illegible] aggregating more than [illegible] n different cases. 1937 [illegible]

[illegible] by Whipping (Burm Amendment) Act 1927—computation of the maximum period imprisonment—period of imprisonment prior to the offence not to taken into account. 1934 Rang. 58 35 Cr L. J 1027 1934 Cr. 75. (7 Rang 769, 1930 Rang 138) *Dist.*

S 396. Procedure if punishment cannot be inflicted under sec 394

——where a M finds that a sentence of whipping passed by him is inexecutable due to bad health of the accused, he can either remit the sentence altogether or sentence the offender in lieu of whipping to imprisonment or fine under sec 395 (1) but he has no power to take a bond under s 562 from the accused. 1938 Rang. 218.

S. 397. Sentence on offender already sentenced for another offence

——antedating of a sentence of imprisonment is contrary to the spirit of ss. 383 and 397 1933 Rang 28 34 Cr. L. J. 447: 1933 Cr. C 275

——the word sentence in s. 397 and its provisions include an order of committal or detention in prison under s 123 Cr P. C. 1932 Rang 50 I. R 1932 Rang 52 9 Rang. 612 135 I C. 644: 1932 Cr. C. 210 33 Cr L J 174

——in case of two successive sentences of imprisonment if the first conviction is quashed on appeal the second imprisonment runs from the date of accused's acquittal, and equitable principles require that the period of imprisonment already undergone under the first conviction should be deducted from the imprisonment subsequently inflicted. 1932 Sind 159 1932 Cr C. 695 I R 1932 Sind 191 140 I C. 481.

S. 401. Power to suspend or remit sentences

——one G took part along with his brother and uncle in mercilessly beating one Z from the effects of which the latter died All the three were convicted under sec 302 and sentenced to transportation for life. G was a boy of fifteen, held that the presumption was that G acted under the influence of his maternal uncle and his case was one which called for intervention of Govt. 1933 Lah. 1021 1933 Cr. C. 1558

——causing death of one's own child born of illicit intimacy, mitigating circumstances 1932 Lah 297 137 I C. 259: I. R. 1932 Lah. 318: 1932 Cr C. 377 · 33 Cr. L. J. 448.

——participation in murder under the influence of father and brother, accused being of the age of 17, fit case for the Local Govt. to exercise powers under sec. 401. 1932 Lah 259 33 P. L. R. 191 · 137 I C. 293 · I. R. 1932 Lah. 338: 193 Cr C 324

——accused being of tender age and murder being under provocation, the case should be recommended to the L G 1932 Lah. 308: I R. 1932 Lah. 486: 1932 Cr. C. 422. 33 Cr. L. J. 580: 138 I. C. 413 33 P. L. R 279

——a woman aged about 20 was turned out by her husband and committed murder of his child on account of weak intellect, treatment of her relations and extreme poverty and was sentenced to transportation for life—H. Court recommended the case for reduction of sentence to that of one year's rigorous imprisonment 1934 Lah. 31 · 35 Cr. L. J. 652 1933 Cr. C. 44.

S. 401. Power to suspend or remit sentences—*contd*

——where an approver who had been convicted of being accessory to murder on forfeiture of her pardon was less than 17 years old at the time of the murder and her statement as approver led to a successful investigation and the conviction of the principal criminal, there could be no stronger case for the exercise of the prerogative of mercy. 1937 Lah 689. 171 I. C. 954.

S. 403. Person once convicted or acquitted not to be tried for same offence

——the question as to whether a particular trial is barred by reason of previous prosecution ending in conviction or acquittal is a question to be determined on the facts and circumstances of a particular case. The true test is not so much whether facts are the same in both trials as whether the acquittal or conviction from the first charge necessarily involves an acquittal or conviction on the second charge Facts in a prosecution under s 121-A I P C and an earlier charge considered, sub-sec (2) of sec 403 Cr P C was attracted and the prosecution was not barred 1937 Cal 99 38 Cr L J 818 **Sp B.**

——in order to plead effectually a plea of *autrefois acquit*, it must appear that the accused has been legally acquitted The question is whether the accused could have taken a fatal exception to the former indictment, for if he could, no acquittal will avail him Where in charge under s 186 I P C the accused raised the plea that as there was no complaint under s 195 (1) (a) Cr P. C the trial was illegal and the plea was upheld and the accused was acquitted in a subsequent case on necessary complaint under s 195 the plea of *autrefois acquit* having been taken it was held that the former trial was void, the charge and judgment of acquittal were both void and there was nothing to recognise in support of the plea 1937 Mad 301 38 Cr L J 457 I. L R. (1937) Mad 664 **F. B**

——where the accused is once acquitted under s 247 no further complaint lies against him on the same facts The fact that the complainant and his counsel did not appear because he mistook the date does not give the complainant a right to institute a fresh complaint again 1934 Lah 211 1934 Cr C 446

——an accused person let off at a former trial in respect of an offence committed in furtherance of the object of a criminal conspiracy can subsequently be charged for the offence of conspiracy But the evidence on which he has been acquitted cannot be received at a subsequent trial on a charge of conspiracy. 1934 All. 61 35 Cr L. J. 1349 1934 Cr C. 130

——where person is convicted of the specific offence of possess fire arms without a license the same facts cannot be used to sup a conviction and separate sentence for conspiracy 60 C. 147 C. W. N. 84 1934 Cal 368 35 Cr L J 766 1934 Cr. C. 4

S 403 Person once convicted or acquitted not to be tried of same offence—*contd*

——where a person is acquitted of an offence under s 397 I. P. C he cannot be tried subsequently on the same facts for an offence under sec 307 I P C 1934 Mad 311 35 Cr L J 783 1934 Cr C 604

——complaint under s 182 made by officer not authorised, prosecution withdrawn on that account—second trial with proper complaint is not barred 1934 Pat 411 35 Cr L J 686 1934 Cr C 882

——the dismissal of a complaint after recording of the prosecution evidence and framing of a charge, on discovery that the complainant had not been examined under s 200 Cr P C does not amount to an acqu ttal so as to bar a fresh trial on a fresh complaint 1934 All 877 35 Cr L J 1177 1934 Cr C 1084

——an order of discharge cannot be a bar to the trial of the person discharged for the same offence of which he was discharged, but it would be highly inconvenient to allow successive trial of compla nts based on same allegations by d fferent Magistrates and d fferent Courts after a previous complaint on the same facts has been dismissed by a M of competent jurisdiction A trial of such a complaint before a different M is tl erefore barred 1934 All 87 35 Cr L J 1062 1934 Cr C 150 Similar case 1935 All 59 36 Cr L J 128 1935 Cr C 38

——where the applicant was once charged under s 468 by the trial M and acquitted the S J cannot order him to be tried once again for the same offence 1934 Oudh 259 35 Cr L J 570 1934 Cr C 765

——the dismissal of a complaint or discharge of the accused is not an acquittal for the purpose of sec 403 Therefore an inquiry on a second complaint on the same facts where the first compla nt has been summarily dism ssed or the accused discharged is not barred absolutely 1934 All 514 35 Cr L J 1059 1934 Cr C 614

——s 247 appl es only to summons cases Where a complaint is under a sec which makes a warrant case the correct sec to apply is sec 259 so that if the complaint is d smissed for default the d smissal operates as a discharge *and a subsequent trial on a fresh compla nt* without the revision of the order of d scharge is not barred under s 403 1934 All 340 : 1934 Cr C 418, when summons is issued to accused and complainant remains absent at hearing and the accused is acquitted, subsequent complaint on the same facts is barred by s 403 62 C 1119 39 C. W. N 919 1935 Cal 491 62 C. L. J. 240 36 Cr I J 1288

——the terms of sec 403 are very much wider than the rule *autrefois acquit* in England. The test is whether a person is sought to be tried on identical facts a second time 1936 Mad 353 : 37 Cr. L. J 637 1936 Cr C 433. F. B

S 403 Person once convicted or acquitted not to be tried of same offence—*contd*

——where the case of the accused was taken up by the first class Bench for summary trial and was then transferred to the file of a second class Magistrate who discharged the accused under s 259 Cr P C as the complainant was absent, a second case was not barred as the Second class Magistrate acted without jurisdiction 55 Mad 795 62 M L J 738 1932 Cr C 509 138 I. C 581 I R 1932 Mad 594 33 Cr L J 653 1932 Mad 505

——complaint of offences under ss 415 and 420 I P C—offence under ss 420 compounded and the accused acquitted after recording the evidence of the complainant s agent—acquittal upheld by the H C. —summons in respect of offence under s 405 I P C restored—sec. 403 Cr P C pleaded—held that the facts in the case of cheating of which the accused had been acquitted were incidental with those in the case of second trial and previous acquittal furnished a valid plea under s 403 37 Cr L J 637 1936 Mad 353 1936 Cr C. 433 **F B**

——the acquittal of an accused person on a charge of affray under s 160 I P C is no bar to his subsequent trial under s 323 I P C for causing hurt in the course of the affray as they are distinct offences 1936 Pat 503 37 Cr L J 785 1936 Cr C 825

——swearing a false affidavit and cheating by filing such false affidavit are distinct offences even though they are parts of the same transaction Therefore the acquittal of one offence does not bar a subsequent trial for another offence 1936 Rang 174 37 Cr L J 492 1936 Cr C 271

——where a series of acts constitute a single transaction but are capable of being viewed from two points of view constituting different offences, separate convictions are sustainable 55 Mad 788 1932 Mad 362 33 Cr L J 522 I R 1932 Mad. 454 1932 Cr. C 295 137 I C 754 19 Bom L. R 1478 *Diss*

(*Cunliffe J*) a Sessions Judge hearing an appeal by a person convicted by an Assistant Sessions Judge who acquitted him of certain charges but convicted him of others in agreement with the verdict of the jury, cannot order a retrial in respect of the offence of which the accused had been acquitted, when there is no appeal by the Crown against the acquittal The accused is protected by s 403 (*Henderson J*) If the prosecution wants a trial on all the charges they must produce a specific order to that effect 63 C 1112 63 C L J 124

——acquittal on a charge under s 283 I P C for creating obstruction in the bed of a river bars a subsequent prosecution under s 76 B of Bengal Embankment Act for meddling with embankment. 1936 Cal 686 1936 Cr C 946

——where prosecution is launched against certain persons for conspiracy for doing some unlawful act and accused are convicted after the trial a subsequent prosecution and trial of some accused for a

S 403 Person once convicted or acquitted not to be tried of same offence—*contd*

different conspiracy is not barred by s. 403. 62 C. 749 1935 Cal 316 36 Cr L J 982 1935 Cr C 467

——accused was charged originally for murder under s 302 and conspiracy to murder under ss 302/120-B I. P. C. He was acquitted of the first offence and convicted of the second On appeal against convicton the sentence was reversed and retrial was ordered At the ... offences, held (per *Lord* ... was barred by s 403 ... held to apply to all the ... 39 C W. N 677 ... H. C. held that the Appellate Court could order retrial only of the charges on which the accused were convicted and against which appeal was filed and the lower Court could not convict of an offence in respect of which it has already acquitted 1933 All 941 1933 Cr C 1561.

——conviction under s 307 I P C does not bar a trial under s 302 I P C 1935 Pesh 18 36 Cr L J 813 1935 Cr C 191.

——discharge of the accused for want of formal complaint, formal complaint made, accused convicted, order did not fall within s 247 1932 Cal 871 36 C W N. 1038 1932 Cr C 893 32 Cr L J 27 *Dist*

——s 403 and 531 Cr P. C must be read together and a Court is a Court of competent jurisdiction within the meaning of s 403, where the finding, sentence or order of the Court could have been set aside under the provisions of s 531 but has not, in fact, been so set aside Sec 531 must be deemed to give jurisdiction to a Court which would otherwise lack it unless it appears that such lack of jurisdiction has in fact occasioned a failure of justice. 1937 Sind 179 · 38 Cr. L J. 959

——where a criminal case was tried by a M and the accused were acquitted and in revision it was held that the M had no terriotorial jurisdiction to try the case having regard to s 531 Cr. P. C the acquittal was a bar to a second complaint in the proper Court since there was no suggestion that any failure of justice had occurred by reason of trial having been held in wrong Court 56 M 996 1933 Mad 765 34 Cr L J 1080 1933 Cr C 1372 F B 30 M 94 *fol.*

——the dismissal of a police report under sec. 173 Cr P. C. is merely an administrative order and the principle of *autre fois acquit* cannot apply to such orders 1933 Pat 242 34 Cr. L J. 1198

1934 Cr C 352

S 403 Person once convicted or acquitted not to be tried of same offence—*contd*

——under sec 403 (2) a previous acquittal is no bar to a trial for any distinct offence for which a separate charge might have been made in the former trial under sec 235 (1) Cr P C 1934 Mad 673 35 Cr L J 1503 1934 Cr C 1307

——sec 403 (1) will operate in cases covered by ss 236 and 237 but will not operate in cases covered by sec 235 (1) The accused were convicted for an offence of criminal conspiracy but they were not charged [illegible] acts of cheating which took place [illegible]

——where on an appeal by the accused against his conviction by a first class Magistrate under s 408 or 408/109 I P C the S J quashes the conviction he has no jurisdiction in view of the provisions of [illegible] upon the same facts [illegible] upon a charge under [illegible] 68 [illegible] certain charges and [illegible]

conviction and sentence does not amount to an acquittal such as is referred to in sec 403 so as to bar a retrial ordered by the appellate Court. 36 Cr L J 1333 1935 A L J 1077

——w [illegible]
under sec [illegible]
not amour [illegible]
All 488

——where the accused was charged under secs 19 (f) and 20 of the Arms Act and was discharged under s 19 (f) but convicted under s 20 which was set aside by the Sessions Judge as being without jurisdiction fresh trial on commitment was not barred 1932 Cal 683 36 C W N 926 139 I C 470 I R 1932 Cal 628 33 Cr L J 770 1932 Cr C 636

S 404 Unless otherwise provided no appeal to lie

[illegible]

S 404 Unless otherwise provided no appeal to lie—*contd*

——secs 408 and 410 are to be read subject to the prov s ons of s 404 wh ch contemplets that the trial a d conviction shall be by the same Judge The Court to wh ch an appeal lies is determined by the status of the Judge ι n the day on wh ch he pronounces judgment Where therefore a Judge holds trial as Assistant Judge but the judg ment (sentenc ng the accused to four years rigorous imprisonment) is pronounced by him in the capacity of an Add tional S J to wh ch
of the judgment
s 408 (b) 1937
in 1938 All 101

——s 404 merely indicates that appeals are to be against judgments and orders but has noth ng to do w th the forum of the appeal wh ch is prov ded for by ss 406 407 408 410 and 411 and the determ nat on of the forum of appeal must depend on the interpretation of the words used in those secs 1938 All 102

S 406 Appeal from order requiring security

——where an order to furn sh security under s 106 Cr P C s

Judge for confirmation and under the proviso to sec 406 no appeal l es to the Dt M in these c rcumstances 1935 Pesh 55 36 Cr L J 936 1936 Cr C 346

——where a M has d scharged the accused under s 107 Cr P C the Sess ons Judge cannot under sec 436 set as de the order of d scharge and direct a further inqu ry 1931 All 53 53 All 148 I R 1931 All 294 130 I C 630 32 Cr L J 570

S 408 Appeal from sentence of Asst S J or M of 1st class

——sec 413 takes away the right of appeal not only in those cases wh ch are referred to in the earl er part of sec 408 but also in cases under sec 349 or under sec 380 Cr P C 41 C W N 833 1937 Cal 394 38 Cr L J 990

——the phrase sentence of impr sonment for a term exceed ng four years" in sec 408 (b) has a reference to the substant ve sentence of imprisonment apart from any sentence of wh pp ng or fine or imprison ment in default of payment of fine 1934 Oudh 433 35 Cr L J 1288

——the word tr al ι the Code has been used in a restricted sense and does not include judgment in a case Conclusion of trial takes place before judgment is pronounced and therefore the judgment is no

S 408 Appeal from sentence of Asst S J. or M of 1st class—*contd*

part of the trial under the Code Where therefore a trial is held and arguments are heard by an Asst S J but he is made an Additional S J. before the delivery of judgment, the appeal against his order of conviction lies to the Court of Sessions and not to the H C The order making him an Additional S J though retrospective in term takes effect under sec 39 only from the date on which it is communicated 1938 All 102, 1937 Sind 22 *Dissented Caselaws discussed* See the Sind case noted under sec 404

S 407 Appeal from sentence of Magistrates of 2nd and 3rd class

evidence
and owers, an
appe Cal 394
33 C 854 1927
Bom

—— an ppeal from a conviction under s 124 A I P. C lies only to the H C under s 408 (c) Cr P C A Sessions Judge has no jurisdiction to entertain or hear such an appeal and if he hears and allows an appeal from a conviction under s 124 A and reduces the sentence, his order is without jurisd ction and liable to be set aside in revisio i by H C 1937 All 466 38 Cr L J 972

S 409 Appeals to Court of Sessions how heard

——where a H C transferred a case from the Court of one

S 411 Appeal from sentence of Presidency Magistrate

——an accused person who is convicted on a trial held by a Presidency M and who is given a non appealable sentence by him does not acquire a right of appeal under s 415 A Cr P C by reason of an order directing h s co-accused who is convicted along with him in the same trial to be released on the execution of a bond under the provisions of s 562 Cr P C 1937 Cal 413 38 Cr L J 876

——appeal does not lie to the H C from an order under s 562 Cr P C passed by a Presidency Mag strate 36 C W N 459 1932 Cal 488 1932 Cr C 480 I R 1932 Cal 478 138 I C 627 33 Cr L J 639

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on a cor
under ss
imprison
Cr. L. J 985

S 412 No appeal in certain cases when accused pleads guilty

——an accused who has bee ɹ ᵋ

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gu ty 12 Nal g 010 1935

a lengthy trial or mpressed
ne or partly
of the other dec ope that a
len ent sentence depart ng
from the ord n , pu t ol t e ol e ce 1934 Pat 330 35 Cr L J 1322 1934 Cr C 722

S 413 No appeal in petty cases

——sec 413 takes away the right of appeal not only in those cases wh ch are referred to in the earl er part of s 408 but also in cases under s 349 or under s 380 Cr P C What s to be seen under the sec s whether the sen en e e l m t prescr bed and whether t of the class ment oned there n lf would apply whether the sentence r s 380 or otherw se Accord ngly no appeal l es from an order passed by a F rst Class M under s 349 sentenc ng the accused to pay a fine of Rs 25 and also b nd ng him over under s 106 Cr P C 41 C W N 833 1937 Cal 394 38 Cr L J 990

——where the accused was charged w th t vo offences and was
rpreta
under
50 and
of any
entence
J was
clearly wrong 1935 All 630 36 Cr L J 1102 1935 Cr C 642

——the express on a sentence of fine includes a case where the aggregate sentence does not exceed Rs 50 So f o e senterce for Rs 20 and the other for Rs 15 are passed no appeal l es 59 C 1131 1932 Cal 551 138 I C 720 I R 1932 Cal 525 33 Cr L J 704 36 C W N 407 1932 Cr C 551 35 C W N 753 96 I C 270 *Ref*

S 414 No appeal from certain summary convictions

held

1933 Cr C 1146

S 414 No appeal from certain summary convictions—*contd*

——sec 414 also applies to a case when more than one sentence is imposed What is meant by the sec is not two punishments sim lar in kind but a combination of two punishments of two kinds 1936 Sind 40 37 Cr L J 455

S 415 Proviso to secs 413 and 414

——the word 'therein" in sec 415 refers to ss 413 and 414 1932 Oudh 27 1932 Cr C 59 I R 1932 Oudh 104 136 I C 248

——where an order to furnish security under sec 106 Cr P C is coupled with a non appealable sentence no appeal l es against an order of imprisonment passed under s 123 in default of furnishing the security 1935 Rang 363 36 Cr L J 1510 1935 Cr C 1087

[illegible]

S 417 Appeal on behalf of Government in case of acquittal

——no appeal under sec 417 can be preferred by the L G against an order of acquittal when an appeal preferred by the accused against his conviction has already been heard and decided by the H C But there can be an application for enhancement of sentence under sec 439 Cr P C 1932 Nag 73 139 I C 63 I R 1932 Nag 85 33 Cr L J 728 1932 Cr C 346 (2 Cal 437 **F. B** 1925 Bom 268, 1926 Bom 555) *Ref*

——an appeal against an acqu ttal for a major offence can be preferred by the Local G although an appeal preferred by the accused

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ec 414 1934 All

just ce in a case, 38 C W N 854

35 Cr L J 1367 1934 Cr C 908 1934 Cal 610

——the right of appeal against an acqu ttal should be used spar ngly and w th circumspection 1933 Mad 230 34 Cr L J 948 1933 Cr C 288

——the right of appeal in case tr ed by jury under Chapter XXIII Cr P C is not created by s 449 Cr P C The right of appeal against

S 417. Appeal on behalf of Government in case of acquittal—*contd.*

an order of appeal is created by sec. 417 and the effect of sec 449, in its application to such appeals, is only to enlarge the scope of such appeal in certain classes of cases to questions of fact as well as of law. 38 C W N [illegible] Cal [illegible] Cr L J 1067 [illegible] C L J 482

[illegible] o

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as to produce a positive miscarriage of justice" or has in some other way so conducted or misconducted itself as to produce a glaring miscarriage of justice or has been tricked by the defence so as to produce a similar result 39 C. W N 15 60 C L J 276 1934 P C 227 1934 A L. J 905 1934 Cr. C 1134 36 Cr L J. 786 56 A 645 P C

——ss. 417, 418 and 423 give to the H C. full power to review at large the evidence upon which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed But the H C should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of *innocence in favour of the accused, a presumption certainly* not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. *Above P C. case*

——if the appellate Court after bearing in mind that there is the presumption of innocence in favour of the accused, still further strengthened by his acquittal and that the trial Court was in a better position to Judge of the credibility of the witnesses examined before it [illegible] nevertheless

[illegible] arly wrong

it would

. 354 35

[illegible] 34 Oudh

ient of the

Court below need not necessarily be perverse or stupid but the indication of error in the judgment should be clearer and more palpable and

would be necessary in

4 Rang. 44 35 Cr L. J

J. 364 1934 Cr C 59

C. 396, 1933 Lah 388

between the procedure

her it be dealing with an

ainst a conviction. But

S 417. Appeal on behalf of Government in case of acquittal—*contd*

there are certain established customs which supplement the statute law, and there are two such customs which all Courts invariably follow These are (1) to presume every man to be innocent until he has been proved to be guilty, and (2) to give to the prisoner the benefit of whatever doubt there may be The appellant who is arguing against a conviction has ... both adverse to the 1934 Sind 84 35

M. appointed under ...nstance of the Local C. 1327

——in order to entitle the Crown to ask the Court to convert an order of acquittal into one of conviction it should be satisfied that the conclusions of the S J are atleast manifestly wrong 1934 Lah. 212 35 Cr L J 349 1934 Cr C 447 1933 Oudh 372

——the Crown coming in appeal ought to show that the view taken by the first Court as to the reliability of the approver is erroneous. 1933 Pat 500

——where there is a reasonable doubt as to the guilt of the accused, the H C will not interfere with an acquittal nor will the Court forget that the burden of proof is on the prosecution S 417 is not intended to be used in every case in which the Govt thinks that there should be a conviction It is not a power lightly to be used and should be used only where there is no reasonable doubt upon the record as to the guilt of the accused 1938 Sind 80

——apppeal under s 417 should be preferred with all reasonable expedition possible 1932 Rang 146 10 Rang 312 138 I C 523 1932 Cr C 709 33 Cr L J 701, 5 A 253 *fol*

...faced with conflicting facts and conflicting testimony in a ... case, acquitted the accused, the H C would not interfere 1937 Cal 156 38 Cr L J 638

——no point other than point of law can be allowed to be raised on either side at the hearing of an appeal against an order of acquittal in a case which is tried by a jury 1935 O W. N 1153 36 Cr L. J. 1467.

——where the evidence clearly establishes that the accused is ... of murder the accused has the burden on him to show that he ... within any of the exceptions When he does not attempt to do

S 417 Appeal on behalf of Government in case of acquittal—*contd*

to be conv cted An acqu ttal under such circumstances is clearly wrong and must be set aside 1937 M W N 557 **F B** 1933 Rang 387 1933 Cr C 1477

——where the accused not only happened to be a relative of the deceased by marriage but also apparently he could have no mot ve for the crime h s acqu ttal i i the trial Court should not be set as de 1936 Rang 90 1936 Cr C 114 56 A 645 **F C** *fol*

—— f in an appeal from an acqu ttal the H C w h le sett ng as de the order of acquittal is not prepared to order a re trial of the accused it does not mean there cannot be a new tr al It is still open to the authority charged w th the in t ation of prosecut ons to prosecute the accused agai for the same offence 1937 Bom 152 38 Cr L J 571 But it is not proper for Govt to attempt to snatch a conv ct on by making out another case aga nst the accused 1938 S nd 108

S 418 Appeal on what matters admissible

——an appeal does not l e under s 418 from the verd ct and judgment in a trial l eld at the Sessions of the H C 1935 Rang 67 36 Cr L J 595 1935 Cr C 167 **F B** (3 Rang 220 1925 Rang 239) *overruled*

——tl e restrict on contained in s 418 as regards appeals in jury cases to be confined to matters of law does not apply to references under s 374 Cr P C 1932 Pat 302 1932 Cr C 774 13 Pat L T 440

—— *n capital sentence cases though the H C is not bound by the* verdict of the jury t must rely upon tl e jury s verd ct if it answe s a reasonable test 1933 Cal 426 1933 Cr C 624 37 C W N 595 143 I C 173 34 Cr L J 533 **F B**

——in an appeal from a tr al by jury on a quest on as to m s direction as to ev dence the H C has to see whether on a proper direction and hav ng all the c rcumstances before them the jury as reasonable men v ould have found that the charge was proved 62 C 337 1934 Cal 847

——before the H C interferes w th a conv ct on in a jury tr al it has to be sat sfied that there was m sd rection by the S J or improper adm s on or exclus on of ev dence 1932 Cal 295 139 I C 497 33 Cr L J 477 I R 1932 Cal 336 1932 Cr C 264

——the words where the trial was by jury mean not where the trial sl ould have been by jury but where the tr al was in fact by jury So where the accused charged with an offence of riot ng and gr ev ous hurt (the forn er be ng excluded from jury t ial in Allahabad) is nevertl eless tried by the Court w th the a d of a jury instead of assessors the verd ct can only be challenged on questions of law 1933 All 128 34 Cr L J 441 1933 Cr C 283 55 A 68 25 B 680 **F B** *fol* In a recent Calcutta case reported in 1938 Cal 51 Mc

S 418 Appeal on what matters admissible—*contd*

secures as a
n tried with
valuable than
ontrary view
"where the
was in fact

——an appeal lies on a matter of fact and no limitation is laid down that the H C must find that the view of the Court which acquitted the accused was perverse 1933 All 574 1933 Cr C 913 34 Cr L J 1232 1937 Sind 162

——where a case triable with the aid of assessors is tried with a jury there is no right of appeal on facts 1937 Cal 756

——no condition is imposed on H C in an appeal against acquittal by Judge trying case with assessors 1933 All 535 1933 Cr C 870 20A 459 *Rel on*

Cr P C but by way of appeal by the accused under s 418(1) on a ma er of a

as de the conviction and send the case back to the S J to re examine the matter carefully and then come to the conclusion a d such order is justified by s 561-A Cr P C 1937 All 195 38 Cr L J 465

S 419 Petition of appeal

419 1934 All

S 420. Procedure when appellant in jail

——a convicted person presenting appeal from jail cannot insist that he has the right to be heard in person Appellate Court may however direct under its inherent powers the production of such convict before it 1938 Bom 279, 50 A. 543 29 Cr L. J 334, *Dist.*

S 421. Summary dismissal of appeal

——an Appellate Court which has called for the record after hearing the appellants pleader at the time of the presentation of appeal does not act illegally if it summarily dismisses the appeal after perusing the record and without further hearing the appellant or his pleader. S 421 only provides for one reasonable opportunity to be given to the appellant or his pleader. But where the case appears to be one that ought not to have been disposed of summarily, the H C. will set aside such dismissal in revision and order a re-hearing 40 C. W. N 128 37 Cr L J 904

——an appellate Court should exercise its powers under s 421 with great care 1933 Pat 160 34 Cr L J 1017 1933 Cr. C 402, 1930 Pat, 331 *Ref*

——[illegible] mofussil Courts of admitting all [illegible] on the question of bail, cannot [illegible] 3 Cal 515 34 Cr. L. J 812

[illegible] appeal is a bar to a subsequent entertainment of another appeal presented by the same prisoner through counsel 1936 Oudh 219 37 Cr L J 362, *contra* 1934 All 988 1934 Cr C 1305

——it is illegal for a M at the same time to dismiss an appeal summarily and to modify the order appealed from 1936 Pat 109 37 Cr L J 234 1936 Cr C 144

——in a case under sec 379 I P. C where questions of title to [illegible] Court [illegible] ding [illegible] hich [illegible] sary [illegible] 34

——a criminal appeal cannot be dismissed for default Even if an appellant has defaulted, the Appellate Court is not relieved of the duty of hearing the appeal on the merits and deciding it 1934 Pesh 21 35 Cr. L J 963 1934 Cr. C. 522

——when the H C. considers that the conviction is right but that the sentence is rather too severe, the correct procedure is not to dismiss [illegible]

S 421 Summary dismissal of appeal—*contd*

appeal should then be heard on the same day After reducing the o once he H C [illegible] that sees no gro nd for

915 1930 Pat 12 1930 Pat 499 [illegible]

——while d smissing appeal summarily under s 421 the appellate Court should write some sort of judgment showing that it applied its mind to the facts of the case and has come to the conclusion that there is no merit in the appeal 38 Cr L J 232

——where the appellant s pleader had an opportunity of being heard and the records were sent for he should be aga heard by the S J on the arrival of the record and before the summary dismissal of the appeal 138 I C 384 1932 Cal 397 I R 1932 Cal 450 33 Cr L J 602 1932 Cr C 344

S 422 Notice of appeal

reaso s 11 Pat 697 (12 Pat L T 539 4 Pat 254) *Dist*

S 423 Power of appellate Court in disposing of appeal

——the powers conferred on the appellate Court under s 423 are as ample as the H Court would have on revis on under sec 439 with the excent on of the po er to enhan e he se e [illegible]

1935 Cr C 551 P C

——the appellate Court has power under s 423 Cr P C to pass a new sentence w thin the powers of the Magistrate who tried the case 36 Cr L J 867

——hearing of one party in the absence of the other is ille[illegible] 36 C W N 699 139 I C 436 1932 Cal 856 1932 Cr C 887 [illegible] Cr L J 775

S 423 Power of appellate Court in disposing of appeal—*contd*

——in an appeal from a conviction on a charge under ss 19 (f) and 19 A of the Arms Act, the H C is not competent to substitute a charge under s 20 A of the Arms Act and convict him thereunder To do so would be to infringe one of the most important princ ples of criminal law, namely that a man should not be charged tried and convicted without being heard in defence 39 C W N 334 1935 Cal 561 62 C 433 1935 Cr C 969 **Sp B** Similar case 1936 Pat 536 37 Cr L J 1156 1936 Cr C 898

——an appellate Court can direct the taking of further evidence in *support of the prosecution and a fortiori it is open to the* Court to direct that the person may be given a chance to adduce further evidence 1937 Nag 285 38 Cr L J 1058

——this sec does not authorise the appellate Court to direct that a trial shall be resumed at any particular point or that a particular charge shall be framed 1932 M W N 114

——where the trial M convicted the accused under s 383 I P C for assaulting a certain person whom he thought to be a publ c servant, but the appellate Court fi ds that that person was assaulted but that he was not a publ c servant, it can alter the conviction to one under s 352 I P C 1938 Rang L R 139

——where the counsel for the appellant fa ls to obtain a postponement of the hearing and does not therefore argue the case on the merits but the appellate Court without the assistance of the counsel itself examines the evidence against the appellant and satisfies itself that the conviction is well founded and then confirm the conviction it cannot be said that there has been no hearing of the appeal w th n s 423 Cr P C 1935 Pat 515 36 Cr L J 1354 1935 Cr C. 1273

——the appellate Court has power under s 423 (b) to order a re trial and it has then to determine to what Court the case ought to go An order for re trial by a particular Court can only be made under s 423 (b) and not under s 526 Sec 526 has very l ttle to do with the case because it seems not necessarily to be exclusively confined to, but to deal with cases which are not in the H C when it may appear to the H C that there ought to be a transfer 59 B 496 62 C L J 1 39 C W N 929 36 Cr L J 979 1935 P C 122 1935 Cr C 871 16 Pat L I 513 **P C**

——an order for re trial which directs that a case wh ch has been originally heard before a jury should be re heard before a Court w thout ... hat

S 423 Power of appellate Court in disposing of appeal—*contd*

previously enjoyed of a trial by a jury ought to be generally retained *Above P C case*

——an appellate Court may either itself commit the accused for trial before the Sessions Court or it may direct a M to do so But where it adopts the latter course it does not give the M any jurisdiction to make any further inquiry and the inquiry already held is sufficient for the purposes of Chap XVIII The only course open to the M is to proceed to frame a charge or amend the charge under s 210 and under s 211 to require the accused to give in his l st of witnesses and to make a formal order of commitment under s. 213 1935 All 579 1935 Cr C 598 36 Cr L J 1013

——an appellate Court has no power to order a re trial with the cond tion that the evidence already on record should be taken into consideration If a re trial is to take place the accused is entitled to demand a *de novo* trial under s 428 (1) Cr P C The appellate Court if it thinks that additional evidence is necessary may after recording its reasons either itself take such evidence or direct it to be taken by a M 1935 Nag 125 36 Cr L J 740 1935 Cr C 565

——a partial re trial cannot be d rected by the appellate Court It can either direct a complete re trial or call for further evidence to be placed before itself 1937 Pat 246 38 Cr L J 657

——it is neither necessary nor desirable for the H C to issue a notice for enl ancement of sentence at the time of admission of the appeal 1933 Bom 153 35 Bom L R 174 1933 Cr C 465

——to impose a substantial fine in place of a sentence of imprisonment and maintain the same sentence of imprisonment in default of payment amounts to enhancement of sentence For the [illegible] ve to undergo [illegible] for payment

[illegible] ihancement of sentence if the aggregate period of imprisonment which the accused would have to undergo is to any extent less than the period of the original sentence but where such an alteration of the sentence has the effect of rendering it in the circumstances of the case excessive and inappropriate the interference in revision of a superior Court may be called for 1937 Lah 195 38 Cr L J 428 30 Mad 103 F B, *fol*

——where on appeal a Dt M altered a sentence of four months' rigorous impr sonment and a fine of Rs 20 to imprisonment already undergone and a fine of Rs 50 it was objectionable to enhance the sentence of fine on appeal 1936 Lah 729 37 Cr L J 950 Cr C 764

——accused who was convicted under ss 147 and 323 I P C sentenced to six months rigorous imprisonment for the first offence

S 423 Power of appellate Court in disposing of appeal—*contd*

Rs 100 fined for the second On appeal the Dt M quashed the conviction under s 147 and altered the conviction under s 323 to one under s 325 and retained the whole sentence held that it was an illegal enhancement of sentence 1933 Lah 933 1933 Cr C 1392

——sentence of imprisonment may be altered into one of whipping provided the sentence is not enhanced thereby 1932 Rang 150 10 Rang 317 I R 1932 Rang 177 139 I C 284 33 Cr L J 758 1932 Cr C 711

——where a S J makes a reference to the H C recommending that a suspect who has been bound over in a proceeding under Chap VIII Cr P C and who has failed to give the required security should be detained in prison with rigorous and simple imprisonment as has

(c) read

Sessions Judge can under s 423 (1) (c) alter or reverse such order and under (d) pass any consequential order But he can not order *de novo* trial 34 Cr L J 947 1933 M W N 241

the Court

145 the M failed to pass any order as to costs under sub sec (3) of sec 148 Cr P C the H C can in review pass an order of costs as it is incidential to order for possession within s 423 (1) (d) 1933 Rang 288 1933 Cr C 1084 35 Cr L J 1 F B

——s 423 cl (d) Cr P C read with s 439 does not authorise the H C in revision to award costs of the proceeding before it 1933 All 264 1933 A L J 188 142 I C 537 34 Cr L J 414 1933 Cr C 434 I R 1933 All 125 F B

——under the combined provisions of secs 423 and 439 the H C has power to alter a conviction under s 326 I P C to one under s 302 I P C 1933 Lah 661 1933 Cr C 883 (37 M 119 1 Rang 436) *fol*

——where the accused had a good answer to the only charge made against him and he was properly acquitted by the trial and appellate Courts the H C could not in further appeal convict the accused for a different offence 1934 Lah 843 1934 Cr C 1184

S 423 Power of appellate Court in disposing of appeal—*contd*

——the H C when dealing with cases in revision on appeal is competent to acquit an innocent person although he has failed to exercise the right of appeal 1934 Lah 346 35 Cr L J 1046 1934 Cr C 565

——when the accused who were acquitted of certain charges and [illegible] against the conviction, it is not open [illegible] he conviction to order a re trial of [illegible] ey were acquitted 38 C W N [illegible]

——where the M convicted the accused under s 420 I P C and acquitted him of the charge under s 465 I P C in an appeal by the accused from his conviction under s 420 the S J can only direct a re trial on that charge or one of a cognate nature An order of the S J ordering re trial on both the charges under ss 420 and 465, in the absence of an appeal from the order of acquittal is illegal 1935 Lah 945 1935 Cr C 1284, 1933 All 941 1933 Cr C 1561 It is not also open to the [illegible] which he was convicted and co[illegible] s acquitted 1937 All 240 [illegible] C 999

— [illegible] 302 and 392 read with s 114 [illegible] under s 302 read with s 114 and not under s 392 it amounts to an acquittal under s 392 On such acquittal the H C cannot alter conviction from s 302/114 to s 379/511 I P C 1935 Rang 512 1935 Cr C 1298

[illegible]

58 B 392

——when the evidence actually adduced by the prosecution is not sufficient to support a charge of which the accused has been convicted, it is improper for the appellate Court to give a direction that he should be re tried, 'if the offence has been committed' thereby directing or giving a chance to the prosecution to produce better evidence 42 C W N 812 1938 Cal 361

——an order relating to security can be suspended in appeal by virtue of the powers given by s 423 (1) (d) 1932 All 680 1932 Cr [illegible] 856 139 I C 141 I R 1932 All 523 33 Cr L J 731 A L J 624

——conviction for attempting to cheat X altered in appeal into for cheating Y—conviction not maintainable as the accused [illegible] opportunity to meet the case 1934 Lah 833 1934 Cr C 1180

S 423 Power of appellate Court in disposing of appeal—*contd*

——no general rule can be laid down to determine what is or what is not an enhancement of sentence 1934 All 1031 1934 Cr C. 1338

——where the lower Court acquitted the accused under sec 376 but
amount
alter
1932
Cal 723 1932 Cr C 728

——when the appellate Court finds that the case is not so clear or decis ve as to warrant a re-trial that is when the facts are such that far from being a certainty there is not eve i much propab l ty of a conviction in the event of re trial the appellate Court should refrain from ordering a re trial specially when the original trial had taken a cons der able port on of public time 1934 Bom 303 35 Cr L J 1477 1934 Cr C 1036

——where under Ord nance X of 1932 the matter ought to have
dge omitted to do that and it
ld order retrial by a Court of
1933 Cal 364 1933 Cr C

——the accused were charged under sec 366 or 366 A, or 498 I P C alternatively The assessors found them guilty on the alternative charges The S J though stated that he agreed with the unan mous opinion of the assessors actually convicted the accused under s 366 A only ignoring the other secs held (1) that the H C was competent to alter the conviction under sec 366 A into one on the alternative charge
ght that the
ion
an
21
the
J
ess
acquittal under sec 147 but merely an omission to record a conviction under that sec 1933 All 565 34 Cr L J 1064 See also 1938 Cal 439.
mal

in the H C. a right of appeal on matters of fact as well as of law The

S 423 Power of appellate Court in disposing of appeal—*contd.*

Judges of the H. C are entitled to come to their own independent

——*where the decision in a case does not really turn upon questions* about the veracity of witnesses or upon the finding of doubtful facts but upon the question what inference is to be drawn from well established facts about the existence of which there is not and cannot be any reasonable doubt, the H C is at least equally if not better qualified than the jury to draw the necessary inference 40 C W N 432 37 Cr L J 394 63 C 929 1936 Cr C 145

——where in a trial some of the accused were acquitted and some

jury box or in the jury room But the question whether a juror is

[illegible] 50 C L J 300 1933 I C 400 P C

——before interfering with the verdict of the jury the H C must be satisfied that not only the S J misdirected the jury but his misdirection caused them to come to a wrong conclusion 59 C 1361 1932 Cal 474 1932 Cr C 464 55 C L J 439 139 I C 874 33 Cr L J 854

——in a case of misdirection or admission of improper evidence the H C can go into the facts and decide for itself whether the decision of the lower Court is right on the merits or whether the misdirection or the illegal admission of evidence has occasioned a failure of justice When the facts have to be determined and the evidence is of such a charater as to render it difficult to pronounce any opinion on its character without hearing the witnesses, a new trial may be ordered 1933 Bom 153 1933 Cr C 465

——in a case tried by jury the appellate Court cannot go into the facts of the case except to see whether there has been misdirection by the Judge 1936 Mad 516 59 M 904 37 Cr L J 909 1936 Cr C 635

——the power of setting aside conviction and ordering a new trial for any error or defect in the Judge s charge to the jury will be exerci by the H C. on appeal only when it is satisfied that the accused

S 423. Power of appellate Court in disposing of appeal—*contd.*

been prejudiced by the error or defect or that failure of justice has been occasioned 1937 Pat. 263 38 Cr. L. J 673, 1936 Pat 46 37 Cr L J 320

——on a question of misdirection as to evidence H C. has to see whether it is reasonably probable that the jury would not have returned the verdict but for the misdirection complained of. 1934 Cal 847 1934 Cr. C. 1364.

[illegible]

erroneous verdict 60 C. L J 45 1935 Cal 31 36 Cr. L J 480

——where the trial is by jury the appeal is limited to questions of law and the appellate Court [illegible]

[illegible] misdirection Where, however, there has been no misdirection, the conviction based on the uncorroborated evidence of an accomplice is not illegal 1934 Pat 309 35 Cr L J 1104 1934 Cr. C 730

——before a verdict of jury can be set aside on the ground of [illegible] tisfied that such [illegible] udge. The error [illegible] 1935 All 103 [illegible]

——jury trial on two charges—acquittal on one and conviction on the other—appeal against the order of conviction—order for re-trial if covers the charge on which accused was acquitted—divergent opinions of Judges 62 C. 928 62 C. L J 217 39 C. W. N 677.

——when a verdict of the jury is set aside in appeal it is set aside in its entirety When a conviction is set aside and a re trial ordered, the whole case is re-opened and the accused may be tried again on all the charges originally framed including those of which he had been previously acquitted by the Court of Sessions S 403 (1) has no application, in as much as the re trial will not be a second trial, but only a continuation of the first trial 41 C. W. N. 1112

[illegible] sec. (6) 'guilty' before [illegible] to in [illegible] 554

S 424 Judgment of subordinate appellate Courts

——there is no provision which requires that the H. C after pro-

initial the fair copy of the judgment is in no way a serious defect 1933 All 40 34 Cr L J. 703 1933 Cr C 51 55 A. 132

——the appellate Court's judgment cannot be read with and as supplementary to, the judgment of the Court of first instance; but it must be quite independent and stand by itself In the case, for instance, in proceedings against several suspected persons where they can be dealt with in one inquiry under the law, the appellate judgment must show that the case against each suspected person has been considered separately and the evidence proves the case against each of them individually 1937 Sind 26 38 Cr L J 363

S 426 Suspension of sentence pending appeal Release of appellant on bail.

——a man who is convicted of deliberately attempting to shoot a man with a revolver cannot safely be released on bail by the appellate Court until it is established that he is guilty or at any rate that his conviction is not justifiable The fact that he is only 19 years of age and that it will be unfortunate that he should be associated with bad characters in jail if ultimately it is found that he was not guilty, is no ground for allowing bail. 1936 All 656 37 Cr L J 1017 1936 A L J 961 1936 Cr C 792

——a person against whom an order under sec 107 has been passed is a convicted person and the validity of the order can be considered [illegible]

1932 [illegible]

——[illegible]

furnish [illegible]

on bail pending that appeal the general principles of criminal law require that the period during which he is released on bail must be excluded from the period for which he is to be detained in jail whether or not the provision in s 426 governs the case 1934 All 845 1934 Cr C 1031

——on the plain interpretation of cl (3) the period during which a person is released on bail can not reduce the term of sentence 36 Cr L J 1479 1935 A. L J 1168

S 428 Appellate Court may take further evidence or direct it to be taken

——the power to direct the taking of additional evidence u 428 and 439 Cr P C should not be exercised for the purpose of fill up a gap in the prosecution case when the necessary evidence was available to the prosecution at the first hearing and ought to

S 428 Appellate Court may take further evidence or direct it to be taken—*contd*

produced them 1935 Mad 325 1935 Cr C 445 1937 Mad 181 38 Cr L J 257

——s 428 allowed the Dt M to order the taking of evidence by trial Court in formal proof of the documents but in so far as the order appeared to give the trial Court liberty to hear other evidence to complete the inquiry it was improper 1934 Lah 316 35 Cr L J 1160 1934 Cr C 548

——an order setting aside the conviction and sending the case back for further evidence but not for complete re trial is illegal 1936 Pat 438 37 Cr L J 906 1936 Cr C 699

——the wife of the deceased who was a prosecution witness

notice of 1933 Lah 998 1933 Cr C 1513

S 429 Procedure where Judges of Court of appeal are equally divided

——in cases of differences of opinion in the H C under s 439 *Cr P C, s 429 Cr P C* and *not cl 36 of the Letters Patent* lays down the correct procedure 1932 M W N 873

S 430 Finality of orders on appeal

——though s 430 does not apply to judgment in revisional application the principle of finality of judgments there laid down applies to judgment in revisional application also 1934 Bom 471 1934 Cr C 1343

S 431 Abatement of appeals

——the principle of s 431 applies to revisions so that a revisional reason of the of an offender death be legally due from him

S 432 Reference by Presidency M to H C

——where the trying Magistrate tenders an explanation it is the duty of the S J referring the case to the H C to comment on the explanation 1932 All 683 1932 Cr C 938 1932 A L J 819

S 434 Power to reserve questions arising in original jurisdiction of H C

——in a case under s 355 (1) Ceylon Cr P C it is desirable that there should be available for the tribunal dealing with the reference a full note of the Judges summing up 34 Cr L J 550 1933 Cr C 130 1933 P C 7 P C

S 435 Power to call for records of inferior Courts

——a new p
in revision 55
——this s
criminal Court a
1932 Cr C 149 I R 1932 All 327 137 I C 525 1932 A L J 67
——for the purpose of revision find ngs of facts are not usually interfered with 1933 Lah 236 1933 Cr C 356
——normally a Court of Session will not interfere with concurrent
he Courts below have not
appreciation of the issue
inciple of criminal law, the

——it is open to an accused person in revision to contend that he has been convicted on the strength of ta nted evidence only 1933 Bom 482 1933 Cr C 1586
——the fact that a Sess ons Judge takes a d fferent view from the trying M on the question of cred bil ty of w tness is not a ground on which the H C w ll interfere in rev s on and does not justify the S J in making a reference to the H C under s 438 Cr P C The objections to making references in pend ng proceed ngs are st ll stronger specially when no error of procedure is suggested to have been committed by the trying M A critic sm of the ev dence at such a stage is premature and such a reference cannot be accepted 1936 Pat 626 38 Cr L J 2 1936 Cr C 1064
——the Magistrate s order declining to stay criminal proceed ng pend ng Civil suit is an order within s 435 and cannot form the subject matter of a reference The power to make reference does not exist
1589
eedings
H C
in the
other party 1936 Nag 271 1936 Cr C 1114
——where a S J interferes with an order of discharge under s 437 Cr P C and orders the accused to be tr ed by the Court of Sessions the H C has undoubted powers in revis on to interfere with the order though it would be slow to exercise its revisional po vers When the Sessions Judge s order is wrong and ought not to have been made the H C will set it aside 59 B 125 36 Cr L J 643 1935 Cr C 288 1935 Bom 137 F B
——it is very unusual f
inquiry wl ile it adjud cates
ev dence of certain statements
d scretion of the trial Court
1935 Mad 257 1935 Cr C 3,1
——wl ere a Dt M passes an order in an appeal from the order of the Octroi Superintendent he is acting only under the U. P.

S 435 Power to call for records of inferior Courts—*contd.*

Municipal Act, and not under the Cr P. C, as an inferior criminal Court of the H C. within s 435 Cr P. C Hence his order is not open to revision by the H C 1933 All 281 34 Cr L J 1105, (1927 Sind 623, 1923 All 149, 1929 All. 931, 9 Bom L R 1347) *Rel. on.*

——it is doubtful whether it is within the province of the High Court when acting under s 435 to canvass and express opinions upon all topics however interesting may be the points of law or of practice involved in them, which have arisen in the course of the proceedings before the inferior Court On revision inquiry is limited to "the correctness, legality or propriety of any finding, sentence or order recorded or passed and to ' the irregularity of any proceedings of such inferior Court '. 1938 Rang. 161

——the High Court's power of revision should be exercised only in order to prevent substantial injuries or where there is invoked a point of law of general importance whi [illegible] Bom 637 34 Bom L R 1444 56 P [illegible]

——the H. C can in revisio [illegible] orders under sec 144 but their [illegible] Cr C 420 142 I. C. 319 34 C [illegible]

——no Court can revise its own revisional order. 193[illegible] M. [illegible] 162.

——in case of conviction by Deputy M. the District M. has power to call for the record from the Dy M's Court under sec 435 and to report to the H C under s 438. 57 C. L J. 211.

[illegible] by a [illegible]

S. 436. Power to order inquiry.

[illegible]

evidence 1937 Lah. 682 38 Cr. L J 1072, 1934 Bom 48 35 Cr. L. J 644 · 1934 Cr C. 245 1934 All 944 1934 Cr. C. 1265

——there is nothing in s. 436 to support the view that it is only on a point of law that a Dt. M could interfere with an order dismissing a complaint under s. 203. 1935 All. 439 · 36 Cr. L. J. 526

S 436. Power to order inquiry—*contd*

——a complaint of an offence under sec 304 I P. C. was dismissed [illegible]

rejected with the observation that if the complainant so required his witnesses would be summoned on payment of necessary costs Held, that the order was not justified and that the complaint which contained grave allegations should be promptly and thoroughly investigated and no question of payment or non-payment of costs should be allowed to stand in the way of the examination of all the persons whose evidence might throw any light on the matter 40 C W N 1251

——construction of he sec —divergent views of Judges as to whether a Sessions Judge on setting aside an order of discharge can send the case back to the same M for further inquiry 1937 Sind 86 38 Cr. L J 596

——the Dt M has no power under sec 436 to order that the case should be restored to file All he can do is to direct further inquiry into the case He cannot compel a M to take cognizance of a complaint 1937 M W N 1242

——where a complaint is dismissed under sec 203 and the accused has not been summoned, the proviso to sec 436 does not come into operation and the accused has no right to show cause 1935 Pesh 141 36 Cr L J 1384

——in a case in which two views of the evidence are possible, neither of which can be said to be unreasonable, it is not proper to re open a discharge and order further inquiry 1937 M W N 332

——the Sessons Judge acting under s 436 is not a Court of appeal [illegible]

should be ordered to be taken against him under s 436 1933 Lah 561 34 Cr L J 735 1933 Cr C 819

——the power to order further inquiry conferred by s 436 in case [illegible]

under [illegible]

to an [illegible]

S 436 Power to order inquiry—*contd.*

inquiry has been made and not as contemplated by sec. 436 when a person is discharged before the completion of a trial 1933 Nag 78 34 Cr L J 519 1933 Cr C 315, 33 M 85, *Appl.*

——where a sub-M discharged the accused under s. 209 (2) [illegible]

and for good reasons shown 1933 Lah. 561 34 Cr. L J 735 1933 Cr C 819.

——where the trying M held that a case under s 354 I P C had been made out and he framed a charge under that sec. and an application for framing a charge under s 356 was filed in the Court of the [illegible] had [illegible] the [illegible] ing [illegible] the case from the Court of the trying M and forwarding it to the Dt M was tantamount to quashing the charge which the S J had no power to do under s 436 or s 437 1933 Rang 214 1933 Cr. C 896 34 Cr L. J 1083

——an order by a superior Court to an inferior Court to hold a further inquiry into a complaint which has been dismissed under s 203 Cr P C has acquired what may be called a technical meaning It simply means re-consideration Dismissal on police report without examination of witnesses—order for further inquiry by S. J —trial Court ordering inquiry and report by subordinate M —trial and discharge 19 Pat. L T 336

——where the further inquiry is made whether by the Dt M or by a M subordinate to him the M. who holds the inquiry, can, if he finds sufficient grounds for so doing, not only frame a charge but also proceed to hold a trial 35 Cr. L J 691 1934 Mad. 209 1934 Cr C. 405

——where a complaint is dismissed after summoning the accused, the order is one of discharge under s 253 (2) and not under s 203; and under the proviso to sec 436 such an order should not be set aside without issuing notice to the accused and giving opportunity to him to show cause why further inquiry should not be ordered Disregard of this provision is an illegality. 56 A. 285 1934 All 51 35 Cr L. J 418, 1933 Sind 299 · 34 Cr. L. J 1157.

S 436. Power to order inquiry—*contd.*

——a trial held
authority in exercise
complying with the re
but the provision being
a trial need not be
Rang. 181 35 Cr. L J. 1408,
. Rang 190) *Rel. on*
obligatory on a Court not to
rson discharged has had an
opportunity of showing cause. 1933 Lah 1018 1933 Cr. C. 1555

S. 437. Power to order commitment.

——the word "discharged" in s. 437 does not mean "absolutely discharged and set at liberty" but also partially discharged, or in other words, not charged with an offence exclusively triable by the Court of Sessions 1934 Lah 164 1934 Cr. C. 346 15 Lah 138.

——where an accused is discharged after charge is framed the order of discharge virtually amounts to an acquittal and the Dt M is not justified in setting aside such an order without moving the Local Govt. under s 417 1934 Oudh 327 35 Cr L. J 1151

——it is not open to the Dt M to take any action under s 437 when no irregularity or illegality has been committed by the M who has discharged the accused 1934 Oudh 327 35 Cr L. J 1151

——the accused had been placed on trial for offences under ss. 307 and 323 I P. C and the M though he framed a charge under sec 323 omitted to say anything about s 307, on acquittal of the accused the S J started proceedings under s 437 Cr P. C and ordered that the accused be committed to Sessions on a charge under s 308 I. P. C, held that there was a case before the M

——a committing M cannot usurp the functions of the Sessions Court in the matter of
ment of the Court indicated
J should not be interfered
8 Cr L J 659
-trying M rejecting
evidence as untrustworthy and discharging the accused cannot be to have usurped the function of the S J. 1933 All 482 34 Cr. L. 1201 : 1933 Cr. C. 827

S 437. Power to order commitment—*contd*

——in order that sec 437 may apply, there need not be an order of discharge on a charge of a section exclusively triable by the Court of Sessions The language of the sec requires that the case should be triable exclusively by the Court of Sessions, but it does not go on to state that an accused person has been improperly discharged on such a charge On the contrary the sec. merely says that it requires that an accused person has been improperly discharged by the inferior Court The words of the sec. covers a discharge on any kind of charge 1935 All 366. 36 Cr L. J 1103 1935 Cr C 384

——"discharge" in the sec means not only an express discharge but an implied discharge When an accused who was tried for extortion and robbery was convicted only under s 392 I P C, for robbery and there was no charge framed for extortion under sec 388 I. P. C it amounted to an implied discharge and the Sessions Court could take steps to commit the case in respect of an offence under s 388 I P C 1935 Sind 221 1935 Cr C 1272 1925 Sind 190 *Appl*

——this sec empowers the S J or the Dt. M to set aside an order of discharge under sec. 209 Cr. P C whenever the S. J or the Dt M. [illegible] improper The power to so set [illegible] the order is perverse or manifestly [illegible] an honest appreciation of the [illegible] 125 1935 Bom 137 36 Cr. L J 643 1935 Cr C. 286 F B

——s 437 differs in important particulars from s 436 Sec 437 is mainly intended to meet the case [illegible] that he [illegible] open to the M to come to the conclusion to which he did come on the materials before him and whether his finding was not only wrong but perverse 1935 All 366 36 Cr L J 1103 1935 Cr C. 384

S 438 Report to High Court

——the Dt. M. is not competent to make a reference direct to the H. C questioning the propriety of an order passed by a Criminal Court superior to himself, *i e*, the Sessions Judge 1933 Lah 433 1933 Cr. C 674 34 Cr L J 371

——sec 438 (1) contemplates action by the Sessions Judge or Dt M upon examination of the proceedings of a subordinate Court It does not authorise the Session Judge or M to refer his own order with a recommend [illegible]

S 438 Report to High Court—*contd.*

trying M then and then only should a revision be allowed or reference

——the accused were convicted by the Deputy M under the Opium Act and sentenced to fine or in default to imprisonment The accused preferred an appeal to the Sessions Judge but the same was dismissed The Dt M made a reference to the H C stating that the sentence should be enhanced held that the Dt M had power to call for

the S J in appeal 1933 Pat 305 1933 Cr C 826 14 Pat L T 364 but see 57 C L J 211

——a M s order declining to stay proceedings in a criminal case pending a civil suit is an order within the meaning of sec 435 and can form the subject matter of a reference The power to make reference does not exist merely in matters fit for revision 1933 Bom 485 1933 Cr C 1589

——under sec 438 the Sessions Judge and Dt M have concurrent jurisdiction Therefore the Dt M can directly refer a case to the H C under that sec 1934 Sind 154 1934 Cr C 1146

——no reference or revision can be accepted by the H C which involves no questions of law 1934 Oudh 278 1934 Cr C 774 1934 Oudh 276 1934 Cr C 773

——an appeal by one of two accused convicted together was transferred by the S J to the Additional Sessions Judge The latter set aside the conviction and made a reference under sec 438 Cr P C recommending that the other accused should also be acquitted Held that as the appeal by the other accused had not been transferred to the Additional S J the reference by him was not competent 1934 Oudh

S 438 Report to High Court—*contd.*

to the H C instead of referring the case to the Local Govt. for orders held that though the appellate Court did not expressly dismiss the

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art s

appreciation of facts or where he suspects an error of law then unless the error of law is manifest, unless the case involves a matter of principle and *unless* there has been a serious failure of justice, he is not under obligation to refer the case 1937 Pat 110 38 Cr L J 470

——under sec 438 all that the Dt M can do is to refer the matter to the H C with his recommendation His powers under that sec *refer to* sentences imposed against the applicant before him Where therefore the order complained against is an order directing a minor girl *to be produced* in Court and handed over to her husband, the Dt M has no power in revision to set it aside 1936 All 852 1933 Cr C 1111

——a Dt M making reference in respect of an order of discharge *passed* by a subordinate M under s 119 should not associate himself with the criticism of the order by the police prosecutor. It is improper *to forward a letter* of police officer containing his opinion with regard to the order

files an
to the
37 Cr

——Rule 203 has been framed for the guidance of Dt Ms in *suitable cases* and cannot be read as saying that a Dt M shall never refer an acquittal to the H C If the rule is construed in the opposite way *it would be ultra vires* the powers of the Courts 1938 Mad 349 F B

S 439. High Court's power of reference

Acquittal, revision against

——where the M's order of acquittal proceeds on a misconception of law on the material points involved in the case, the H C can in *revision set aside* the order of acquittal and order a re trial 1934 All 190 35 Cr L J 998 1934 Cr C 200

—— into evidence
1934 Al is reserved for
exception J 470, 1937
Nag 10

—— even
rial
ear
al

S 439 Acquittal, revision against—*contd*

held that the H C should interfere on reference with the order of acquittal 1934 All 714 1934 Cr C 902

——but the H C will not except perhaps in very special circumstances, interfere with an order of acquittal on an application for revision by a private person 1933 Oudh 430 1933 Cr C 1315 36 Cr L J 1336 31 N L R 261, 1937 Nag 72 38 Cr L J 334

——the H C can interfere in revision in a proper case even at the instance of third party or the Bar Association 1932 Lah 364 33 P L R 384 1932 Cr C 482 I R 1932 Lah 253 136 I C 717 1932 Lah 559 I R 1932 Lah 606 139 I C 696 33 Cr L J 831 33 P L R 911, (1931 Lah 145 1930 Oudh 497) *Affirmed* 1932 Lah 613 1932 Cr C 919

——acquittals should not be lightly interfered with in revision at the instance of a private party The fact that the trying M on the facts found by him has wrongly applied the law is no ground for re opening the case and for putting the accused in peril again. 40 C W N 931 37 Cr L J 1081

——where the Crown has not filed an appeal against acquittal or appeared to support the revision it may be reasonably presumed that it has ratified the proceedings which ended in the acquittal and the H C will not interfere with the order of acquittal based on compromise

compoundable could not be

I J 718 1933 Cr C 585 1933

C 56 C 924) *Rel on*

preciate the questions of fact which he had to determine in order to adjudicate on the plea of right of private defence and acquitted the accused and the brother of the complainant who died during the trial made an application for revision held that the M having failed to appreciate the question of fact which he had to determine in order to adjudicate on the plea of private defence there was no proper trial of the question and so there should be a re trial 1937 Pat 110 38 Cr L J 470

Administrative order revision of jury list

——on order restoring the names of certain persons to the jurors list after the same had been removed from it on objections made and heard without notice to the parties concerned is an administrative and not a judicial order It cannot be revised under s 439 1934 Cal 487 38 C W N 363 1934 Cr C 695

Alteration of conviction

——the H C cannot alter a conviction on a charge under s 498 only to a conviction under s 366 A or s 373 as these offences major offences 1934 Lah 122 1934 Cr C 239

——an appellate or revisional Court is entitled upon facts to a conviction of a substantive offence into a conviction of an 1935 Pesh 67 36 Cr L J 1438

S 439 Applicability

——where a civil or revenue Court initiates a proceeding under s. . . . C . . C . . . vith an order of the . . . here a criminal Court . . revised only under . . . 1935 Cr C. 113

Competency of revision

. . . h in

473 35 Cr. L J 1134

. . . on

313 37 Cr. L J 562 1936 Cr C 479

——if the order under sec 203 Cr P. C dismissing the complaint is otherwise good the H C will not interfere with it simply for the irregularity caused by the fact that the Magistrate allowed the party complaint against to appear and adduce evidence 36 C W. N. 674 1932 Cal 697 138 I C 639 33 Cr L J 636 1932 Cr C. 652 I. R 1932 Cal 473

——where a M contents himself with framing charge of an offence under s 147 I. P C instead of under s 452 I P. C. and passes a non-appealable sentence, the H C will not interfere in its extraordinary jurisdiction in revision, on the ground that if the M had framed a charge under s 452 he would have been compelled to pass an appealable sentence 1936 All 147 37 Cr L. J 417

——the High Court's power of revision under s. 439 Cr P C in respect of an order of conviction passed by the Union Bench is restricted But s 107 of the Government of India Act may justify such interference in a proper case. 59 C 1080 1932 Cal 867 1930 Cr C 891.

——it is the uniform practice of the Allahabad H. C not to interfere in revision against an appellate order of a M confirming the conviction . . . unless either the . . . nce. An order of . . . entertaining such . . . 1933 All 283 34 Cr. L J 1048, but the H. C. is not bound to refuse an application in every case merely because it had not been presented in the lower Court of appeal Where an outsider presents an application in the interests of the public, the H. C. has jurisdiction to interfere to meet the ends of

S. 439. Competency of revision—*contd.*

justice. 1933 All 612 34 Cr L J 1053 1933 Cr. C. 984, and it has been held by the F. B that in observance of the well established practice, neither an application by an accused nor by the third party should be entertained, unless there are special reasons why the applicant should not have gone to the Dt M or the S. J in the first instance, *but if a Judge on very special grounds decides to interfere, he cannot be* said to be acting illegally 1933 All. 678 34 Cr. L J. 1115 1933 Cr. C. 1190. **F. B.**

——the H C. will not generally entertain a revision when the applicant could have gone to the Dt M or the S J But this practice does not oust the jurisdiction of the H C to entertain revision 54 All. 331 33 Cr. L. J 528 1932 All 125 1932 Cr C 150

——although no appeal is provided against an order accepting a claim under s 443, a revision is always open 1933 Lah 1019 1933 Cr. C. 1556

Costs

——s 423 Cl (*d*) Cr P. C read with s 439 does not authorise the H. C. to award costs of the proceedings before it 1933 All 264 55 A. 301 1933 Cr C 434 34 Cr L J 414 142 I C 537 **F B**

Court acting *suo motu.*

——where the illegality of the sentence is patent and has come to its notice, the H. C should deal with the matter *suo motu* in the exercise of its power of revision under s 439 even though the accused has not appealed 1934 Oudh 151 35 Cr L J 915 1934 Cr C. 495.

——where the record in a case is before the H C, it can set aside the conviction of a person, if it thinks that he should not have been convicted, even though he has not appealed from his conviction. 1934 Sind 72 35 Cr. L. J 1254 1934 Cr C 625

——where the H C is satisfied that an accused is being prosecuted without there being any material for the prosecution it should interfere to stop patent injustice calling for a prompt redress 1932 Pat 72 I R 1932 Pat 129 33 Cr L J 349 1932 Cr C 136 136 I C. 842, 26 C. 786 *Ref*

Delay.

——where the delay caused in filing a revision to quash the proceedings is sufficiently explained by the accused, the H C can the application and pass orders 1933 Cal 647 1933 Cr. C 1057

S 439 Delay—*contd*

——so far as the H C is concerned there is no rule of practice that criminal revisions which are filed after the expiry of 60 or 90 days must be rejected simply on the ground of delay and laches The discretion of the Judge is unfettered 1934 Lah 264 35 Cr L J 1447 1934 Cr C 502

Discretion

——the H C will not lightly interfere with the exercise of discretion vested in the lower Court Refusal of bail by S J —when H C will not interfere 1933 Sind 367 1933 Cr C 1339

——a sentence of fine only in a conviction under s 325 I P C is irregular but the H C should not interfere with it in revision as the revisional power is intended for the redress of genuine grievances and not of mere formal defects 1933 Pat 179 142 I C 624 I R 1933 Pat 161 34 Cr L J 407 1933 Cr C 510

——the H C should not interfere where the M entertained second complaint on same facts after first complaint was summarily dismissed 1934 All 514 35 Cr L J 1059

——the H C should not be asked to decide in first instance those questions which the M ought to decide for himself 1934 Sind 20 35 Cr L J 891 1934 Cr C 218

——unless there is something manifestly wrong with the sentence unless it is clearly out of proportion to the offence, the discretion of the M in the matter of sentence should not be interfered with 1934 Pat 214 35 Cr L J 1327 1934 Cr C 440

——the discretion of the lower Court in dismissing a complaint should not be lightly interfered with though there might be something which can be said against the order if there is as much to be said in its favour 1937 Sind 81 38 Cr L J 742

Duty of Court

——the mere fact that, an accused in the Magistrate s Court refused to take part in the proceedings before him or stated that she had nothing to say in defence should not prevent a revision from her conviction from being heard There is an obligation on the H C to superintend and supervise the subordinate criminal Courts and to [illegible] y to law How [illegible] ce and however [illegible] no hesitation in [illegible] conviction was illegal 1933 All 678 34 Cr L J 1115 1933 Cr C 1190

Enhancement of sentence

——the question of punishment is peculiarly a matter for the Court The Crown has no right in revision to seek to influence the Court unless invited by the Court to do so 38 C W N 25 1933 Cal 870 1933 Cr C 1481, *contra* 1933 Oudh 421 1933 Cr C 1291

S. 439 Enhancement of sentence—*contd*

——ordinarily it is for the Govt to move the H C to enhance sentence but if the attention of the Govt is not drawn to a particular matter which requires attention, that is no reason why the H C should not do its duty and exercise powers conferred on it by law even in case of conviction by a Judge of the same Court 1936 Sind 233 1936 Cr C 1089

——it is not the practice of the H C to enhance the sentence if it is otherwise substantial, even if the superior Court might have originally awarded a higher sentence 1934 Lah 89 35 Cr L J 1453 1934 Sind 157 1934 Cr C 1149 1934 Lah 613, 1934 Bom 471 1934 Cr. C 1343

——the dismissal of an appeal by the H C does not preclude it to enhance the sentence in the exercise of its revisional jurisdiction 1932 Pat 126 I R 1932 Pat 42 10 Pat 872 13 Pat L T 17 33 Cr L J 155 135 I C 522

——sub sec (6) of sec 439 does not override the provisions of sec 423 (6) when there is a question of sentence being enhanced 37 C W N 1122

——a single Judge of the H C cannot exercise the jurisdiction of enhancement and that jurisdiction can only be exercised by a Bench of the H C Accordingly the order of the single Judge disposing of the jail appeal cannot be taken to have been an exercise of the jurisdiction of the H C under Chap XXXII so far as the power of enhancement is concerned 1933 All 485 34 Cr L J 1205 1933 Cr. C 830

——under sub clause (3) the H C cannot award a greater sentence than could have been imposed by the lower Court 36 Bom L R 1126

——the only limitation regarding enhancement of sentence contained in s 439 is to be found in cl (3), which applies to a case tried by a Magistrate Where the case was tried by an Asst S J that clause has no application and the H C, is competent to inflict any sentence, which in the circumstances of the case might appear to be proper 1935 Oudh 239 36 Cr L J 454 1935 Cr C 439

——although it is not the policy of the Lahore H C to enhance sentences in criminal cases on a petition by a party yet it is not an invariable rule and in proper cases sentence can be enhanced on the petition by a party also 1938 Lah 116

——the H C in the exercise of its revisional power can enhance a

enhance the sentence It is recognised that a person who has, even wrongly, got the benefit of a lenient sentence at his trial, may

S 439. Enhancement of sentence—*contd.*

be allowed to benefit his good fortune, provided the sentence passed is one which is legal. 1937 Rang 254 : 38 Cr. L. J. 1051.

——when in a case of murder, the lower Court passes a sentence of transportation for life, the H. C has power to set aside the sentence and impose a sentence of death. 1935 Lah. 337 . 36 Cr. L. J. 1001 1935 Cr C 571.

——where the M found the accused guilty of the offence of theft [illegible]

person is already before the Court by their advocate or pleader, it is nevertheless incumbent upon the Court to issue notice to him to bring him before the Court 37 C. W. N. 1122, 62 C. 952 · 37 Cr. L J. 859

——s. 439 (6) entitles an accused person who has been convicted on a verdict of jury and who has been called upon to show cause why his sentence should not be enhanced, to show cause against his conviction within the limits laid down by sec. 423 (2) The combined effect of ss. 439 (6) and 423 (2) is to entitle the accused to question the conviction by showing that the Judge misdirected the jury or that the jury misunderstood the law The accused cannot re-open the case or evidence and impugn the verdict of the jury 62 C. 952 37 Cr. L J. 859, 1936 All 850 1936 Cr. C. 1109, 1936 Sind 233 1936 Cr. C. 1089 But [illegible] consequently [illegible] case and [illegible] filed by [illegible] 904 · 37 Cr. L. J. 909.

——petition for revision by accused being dismissed, the accused has no right to be heard on merits of conviction when subsequently an [illegible] of the sentence.

[illegible] whose appeal [illegible] 1932 Pat 42 : 10 Pat. 872 33 Cr. L J 155 1932 Cr. C. 158

——when the H C. has before it on appeal a record of criminal proceeding, it can proceed to exercise its revision powers if it chooses to [illegible]

S 439 Enhancement of sentence—*contd*

was immaterial 1935 P C 35 60 C L J 598 39 C W N. 350 57 A 156 1935 Cr C. 199 37 Bom L. R 160 P C

such sentence up to the maximum sentence prescribed by law for the offence even though it may exceed the sentence that can be passed by an Asst S J 1935 All 989 1935 Cr C 1219

——an accused who has been convicted on his own plea of guilty and on whom a notice is served under sec 439 (6) Cr P. C, for enhancement of sentence, is entitled to appeal both against his conviction and sentence, notwithstanding his plea of guilty. 12 Rang 616 1935 Rang 49 1935 Cr C 176

Evidentiary value of accounts.

——the question of the value as evidence of accounts is one of fact and cannot be interfered with in revision 62 C 749 36 Cr. L. J. 982 1935 Cal 316 1935 Cr C 467

Expunging remarks.

——a M should not in his judgment make observations prejudicial

Finding of fact

——the finding of fact of the Courts below, if based upon evidence, cannot normally be disturbed in revision 1934 Lah 264 35 Cr L J 1447 1934 Cr C 502, 1935 Rang 192 36 Cr. L J. 1044 1935 Cr C. 748

——where on examination of record the H C finds that the weight of evidence is in favour of the accused and the lower Courts have not given due weight to the evidence, the H. C will interfere. 1934 *Oudh 424 35 Cr L J 1278*

——where the lower Court has drawn erroneous inferences from circumstances which really did not exist and failed to take a right view of the evidence, the H. C will interfere in the interest of the accused who has been wrongly convicted 1934 Rang 42 35 Cr L. J. 849 1934 Cr C 265, 36 Cr L J 1215, 1936 Oudh 401 37 Cr L J. 951.

——finding of fact can be challenged in revision if it is not based on the evidence on the record and is proved to be wrong from the record itself. 1935 Oudh 241 36 Cr. L. J. 477.

S 439 Finding of fact—*contd*

toy-work the H C refused to be bound by the concurrent finding of fact and on a personal inspection came to a different finding that it was a toy work and not a fire work 1933 Sind 171 34 Cr L J 1046

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Court
defective that the conscience of the Court is touched or there has clearly been a miscarriage of justice 1936 Sind 243 1936 Cr C 1099

——if there are special circumtances such as that the M who convicted the accused had not the benefit of weighing the prosecution evidence first hand or that on a very important point regarding credibility of the prosecution story the S J has expressed no definite opinion the H C will yield to the prayer for a re scrutiny of the whole evidence 1933 Sind 139 34 Cr L J 802 1933 Cr C 337

——where the Courts below have not applied their minds properly to the defence set up by the accused and consequently there has been a failure of justice it is necessary for the H C to interfere 1933 Sind 359 1933 Cr C 1335 1933 Sind 396 1933 Cr C 1436

Illegal order.

——where a lower Court finds that it has passed an illegal order and informs the H C of the mistake, the latter has power to set right the mistake 1934 Pat 551 1934 Cr C 1195

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of the

Interlocutory order

——the H C will interfere and quash proceedings even though they are of an interlocutory nature in cases where it is clear that interference is necessary where no offence has obviously been committed. 1933 Bom 409 1933 Cr C 1173 57 B 690 1933 Rang 297 1933 Cr C 1128

Irregularity

——where a M exercised his discretion properly in disallowing an application filed at a late stage by accused to further cross examine a prosecution witness, but the point was not taken as a ground in the

S 439 Irregularity—*contd.*

appeal before the S J, held that the H. C. will not entertain the objections in revision and that there was no defect in the proceedings. 1933 Pat 598 1933 Cr C. 1360.

[illegible]

421

Joint trial

——the offences under ss. 457 and 324 read with s. 34 I. P. C. committed on different dates cannot possibly be considered as part of the same transaction and their joint trial is not mere irregularity but an illegality and the Court can set aside the conviction in revision. 1936 Lah. 507 37 Cr L J 722 1936 Cr. C. 512

——where the trial Court has not exercised a wise discretion in directing the splitting of the case against several accused, the H. C. will interfere. 1936 Sind 47 37 Cr L J 716 1936 Cr. C. 319.

New objection.

[illegible]

in a Court of appeal or revision merely because he did not come up straight away to that Court. But an objection as to the legality of the trial can be taken in a Court of revision or appeal, even though it was never taken before. 41 C. W N. 251.

Order of discharge.

——where the appellate Court has set aside the order of discharge and ordered further inquiry, though the order of discharge was neither foolish nor perverse nor based upon an incomplete record, the order of appellate Court may be set aside in revision. 35 Cr. L. J. 449: 1934 Lah. 5.

[illegible] except [illegible] of acqu [illegible] 564

S 439 Order of discharge—*contd.*

have been made the H C will set it aside. 59 B 125 30 Cr L J 643 1935 Cr C 258 1935 Bom. 137 F B.

Order of transfer

——the H C. has power to alter or refuse an order which has been passed by a M under s. 526. 1933 Rang 89 34 Cr L. J 832 1935 Cr C 573

——where the H C. in an application for revision is asked not to transfer any case from one Court to another but to pronounce that an order making such a transfer was made on improper and inadequate grounds such an application is not incompetent. 1933 Sind 205 34 Cr L. J 861 1933 Cr C 718

Other remedy

——where the applicants have a separate remedy, H C. should not interfere in revision 1934 Sind 78 35 Cr L. J 1251

——a boy of ten was convicted of an attempt to commit rape and an order was passed by which he was committed to custody of his father on the latter executing a bond to be responsible for good behaviour of the boy ; though the order was appealable no appeal was filed held that the H C. should not interfere in revision on a reference by D. M 1935 Rang 393, 1935 Cr C. 1116.

Pending case

——if the trying Court thinks that there is a *prima facie* case and from the charge, it would obviously be inadvisable to interfere at that stage unless it can be shown that the M s order is clearly perverse. So long as there are facts which justify the framing of a charge the M. must be left to exercise his discretion and authority and continue the trial 1935 Rang 79 36 Cr L. J 1293 1935 Cr C 958.

——it has been the invariable practice of the Sind Judicial Commissioner s Court, not to interfere with the proceedings pending in the Court of a M save in one contingency, namely the complaint on the face of it does not disclose any offence. 1933 Sind 196 35 Cr L J 84 1933 Cr C 711 A safe and practical test is whether a bare statement of the facts of the case without any elaborate argument would suffice to persuade the H C. that the case is a fit case for interference 1933 Sind 169 34 Cr L J 1019 1933 Cr C. 533, 25 C. 133 f n.

——it is perfectly proper for an accused person to invoke the revisional powers of the H C. at the stage of the trial when a charge is framed against him on the ground that there is no *prima facie* case against him to warrant any charge at all or on the ground of misjoinder

S 439 Pending case—*contd*

[illegible] imstances the evidence but [illegible] ald justify the [illegible] charge 41 C W N 251 1933 S [illegible] 68 34 Cr L J 364 1933 Cr C 216

——charge was framed against the executor for criminal breach of [illegible] ase before the Court it was [illegible] say if mixture of the testators [illegible] nal or only irregular 1933 [illegible] 67

Pending proceedings

——only in exceptional circumstances the H C will interfere in revision in pending cases To justify such interference would require that on the face of the proceedings there should appear some clear injustice requiring immediate redress 1934 Snd 183 1934 Cr. C 1378, 1934 Nag 138 1934 Cr C 569

——ordinarily the H C does not interfere with the unfinished proceedings except in very exceptional cases 1933 Snd 412 1933 Cr C 1545

Proceedings under s 110

——the question whether it is necessary in the interest of keeping the peace to take security from a person under s 110 is essentially a question which concerns the M and the local police The power to demand security from suspected persons is a power that is almost as much of an executive as of a judicial nature The H C will therefore interfere only on very strong and clear grounds which go to show that there has been a miscarriage of justice 61 C 588 1934 Cal 482 35 Cr L J 952 1934 Cr C 690

Proceedings under s 144

——the H C has power to consider in revision whether a M has jurisdiction to pass an order under sec 144 1934 Rang 124 35 Cr L J 1300 1934 Cr C 717

——when an order under sec 144 is passed against a person the proper procedure is to apply under sub sec (4) to the Dt M In exceptional cases however the H C may entertain a revision against the order under s 144 37 C W N 962

——the fact that the time of operation of the order has expired is no bar to the H C considering the validity of the order in revision though it may not be necessary to pass any order interfering with such order [illegible] usual practice of [illegible] which it was with [illegible] spent its force [illegible] 1935 Pat. 461 [illegible] Cr L J 1268 1935 Cr C 1170

S 439. Proceedings under s 145.

——a finding of the Magistrate that both the parties were in joint possession is one of fact which cannot be impugned in revision 1934 Oudh 158 35 Cr L. J 1065 1934 Cr. C 502.

——mere delay in drawing formal proceedings on receipt of police report is no ground for interfering with an order passed under sec 145 which is otherwise proper, in the absence of substantial injustice resulting from such order 1933 Pat 601 1933 Cr. C 1363

[illegible]

Quashing proceedings

[illegible]

——where there is no evidence at all, the commitment may be quashed, because absence of evidence for commitment is held to be a point of law 1934 Sind 27 : 35 Cr L J 884 1934 Cr. C 225

——on a complaint against a company, after going through the several charges the sub-divisional officer came to the conclusion that [illegible]

——where a M directed an inquiry under sec 159 Cr P C to be held by the Dy Spdt of Police, the mere fact that the inquiry was not held by that officer as suggested by M does not make the submission of the charge-sheet on the part of the investigating police contrary to the provisions of the Code, and the H C will therefore, decline to quash the proceedings 62 C 469 1935 Cal. 731 1935 Cr. C 1144

[illegible]

Question of law

——the question that there was no legally admissible evidence against the accused is rather one of law than of fact 1934 Rang 60 35 Cr. L J 808 1934 Cr. C. 377.

S. 439 Reduction of Sentence.

——where appeals are preferred to the H C by accused persons, if they are not dismissed summarily under s 421 Cr P C, the H C has no jurisdiction, at that stage and without notice to the Crown to reduce the sentence under s. 439 Cr P C 62 C. 983 61 C L J 350 39 C. W N 626 36 Cr L J 855 1935 P C. 89 1935 Cr C 551 P C.

Re-hearing

——where the case appears to be one that ought not to have been disposed of summarily, the H C will set aside such dismissal in revision and order a re-hearing. 40 C W. N 123 37 Cr L. J 904

——though the H C should not in revision direct a re-hearing of an appeal on the ground that the appellate Court had taken a mistaken view of the facts yet the H C can and should, in proper cases where the appellate Court has misdirected itself on a point of law, point out the error and direct the re-hearing of the appeal 1938 Rang 193

Remand

——where the prosecution fails to adduce the necessary evidence *which would justify the conviction of the accused* it should not be allowed another opportunity to fill up the gaps deliberately left by them by remanding the case for a re trial 1938 Pat 39

Retrial

necessary for the Court to send the case for retrial even though there may be misdirection or admission of irrelevant evidence as the Court can accept the verdict of the jury under s 167 Evi Act, unless the Court is of opinion that it is difficult to arrive at any conclusion and that it is necessary or desirable that a retrial should be ordered. 1933 Bom 153 1933 Cr C. 465

——there is no prohibition in s 439 ordering a retrial, even when there has been an acquittal The power to order a retrial is unrestricted and such an order does not amount to a conversion of a finding of acquittal into one of conviction within the meaning of cl (4). 1937 All 240 38 Cr L J. 521.

Scope of the sec

——ordinarily any attempt to deprive the accused of the protection and privileges of a substantial nature which the law confers on him must result in a quashing of the proceeding 1930 Nag 249 1936 Cr. C 1040

——under s 439 the H C may if it desires exercise any of the powers conferred on a Court of appeal by s 423 that is, it may itself

S. 439. Scope of the sec—*contd.*

hear the appeal and dispose of it. Interferance in revision is purely ... though in fact

under s 193

such order,

can order the

complaint to be restored to the file for its disposal according to law as it has the powers mentioned in s 423 (1) (c) and (d) 1937 Sind 116 38 Cr L. J. 873

——the words of sec 439 (5) are capable of only one interpretation, *viz* that where the party in question has not appealed, no application ... But in the

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rnment

Where

J. 606

——a finding by the lower Court that there did exist a general conspiracy is a finding which cannot be challenged before the H. C. 62 C 749 1935 Cal 316 36 Cr L J 982 1935 Cr. C. 467

——the H C will not interfere with an error, omission or irregularity unless the same has caused a failure of justice, and as regards questions of facts even in case of concurrent findings the H C can interfere but it will not as a rule go into the evidence save in exceptional cases, as where the judgment of the facts is manifestly wrong and grossly and palpably unjust. 1933 Oudh 257 34 Cr. L. J. 661 1933 Cr. C 562.

——in the absence of an appeal, revision is always open unless there is something special barring revision Even where there is something barring revision the H. C can always hold whether an order had or had not been passed without jurisdiction 1933 Lah 1019 1933 Cr C 1556

Security proceedings

——though the order of a M passed under s 119 discharging an accused can be challenged in revision the H C will not go into the

has been

hich the

ry about

d the M

ground

for interference 1936 A L. J 272 35 Cr L J. 189

Sentence

——it is within the discretion of the trial Court to what extent in the circumstance of a particular case the punishment awarded should approach or recede from the margin prescribed by the law and the

S 439 Sentence—*contd*

H. C. will not interfere with in the absence of sufficient grounds to show that the discretion has been improperly exercised so as to call for interference 1935 Sind 245 1935 Cr C 1308.

Setting aside order of compensation without notice to accused

——although the interests of justice require that ordinarily an accused person should have notice of any proceedings in which an order awarding compensation to him is to be set aside, he cannot be deemed an accused person on his defence within the meaning of s 439 (2) Cr. P C, so that if, after proper attempts have been made, he cannot be served, an illegal order for compensation passed under s 250 Cr P C must not necessarily stand for ever. 1937 Sind 125 38 Cr. L J 783

Technicality

——where the accused was convicted under s 114 I. P C by the trial Court, but circumstances showed that he ought to have been convicted under s 109 held that as the accused on either view was liable to exactly the same punishment, the interests of justice required no interference on merely a technical ground 1937 Pat 317 38 Cr L J 790 18 Pat L T 628

——it is not the function of the H C. when exercising its revisional jurisdiction, to allow guilty persons to escape the just reward of their misdoings on the basis of an unsubstantial technicality 62 C. 749 36 Cr. L J 982 1935 Cal 316 1935 Cr C. 467

Technical offence

——where it was found that a technical offence was committed by the petitioner under sec 170 I P. C and it was also found that the petitioner acted rather through vanity than with any criminal intention the H C. after setting aside the conviction on the ground of misjoinder of offences, did not think it necessary to order further inquiry. 1933 Mad. 434 34 Cr. L J. 1183 1933 Cr. C. 662.

Third party

——the H. C would interfere and reduce a sentence in revision even though the convicted person fails to exercise his right of appeal and does not himself move the Court in revision and the application is made

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S 439. Third party—*contd*

——if an application in revision by a convicted person is barred an application by every one also made at his instigation is equally barred The words at the instance of the party who could have appealed in sub sec (5) do not imply that a third party can make such an application An application in revision would not be entertainable if the accused has failed to avail himself of his right of appeal, but the Court can receive injunction or knowledge from a third party and act upon its own accord 1933 All 678 34 Cr L J 1115 1933 Cr C 1190 F B

Time limit

——the H. C as a matter of practice, will not entertain, in the absence of most exceptional circumstances an application in its criminal revisional jurisdiction after the expiry of the period of sixty days from the date of the decision or order impugned The refusal of the S J to make a reference under sec 438 Cr P C does not furnish a fresh period of sixty days 36 Cr L J 97 15 Pat L T 569

——the High Court will not ordinarily interfere in revision on an application presented more than two months after but this rule is not a rule of law, and does not take away the power of the H C to interfere in any case as undoubtedly it has power to do so even of its own motion and in the absence of any application at all, on a perusal of the record 1933 Pat. 601 1933 Cr C 1363

S 443 Determination regarding applicability of Chap XXXIII

——the provisions of sec 443 are not applicable to proceedings under sec 107 The wordings of the sec obviously refer to an accused person charged with an offence punishable with imprisonment and the [illegible]

summons case It does not contemplate a proceeding under sec 107 to which s 242 does not apply 1933 Lah 1019 1933 Cr C 1556

——the provisions of Chap XXXIII can be invoked for the trial of an offence of murder because an accused charged for murder may ultimately be convicted of a lesser offence 1932 Lah 490 33 P L R 578, 1932 Cr C 628 33 Cr L J 529 137 I C 763

——s 443 (2) is not intended in any way to bar the High Court's power of revision in a case where the express provisions of the statute are not complied with The words rejects the claim in sub sec (2) [illegible]

S 443 Determination regarding applicability of Chap XXXIII—*contd*

on appeal the S J should direct the M to follow the procedure and if he does not do so it is the plain duty of the H C to make that order itself 41 C W N 996

——although no appeal is provided against an order accepting a claim under s 443 a revision is always open 1933 Lah. 1019 1933 Cr C 1556

S 446. Procedure in warrant cases

——before a M makes a commitment under sec 446 (1) he must consider whether there are grounds for discharging the accused under *s 209 or s 253 1933 Pat 677 1933 Cr C 1491 14 Pat L J 726*

——where in a trial of a European British subject under Chap XXXIII only two out of the five jurors were Europeans or Americans the conviction and sentence should be set aside 1934 Pat 200 35 Cr L J 827 1934 Cr C 384

——both the Court of Sessions and the Court of Judicial Commissioner Nagpur, are competent to deal with the case of a European British subject and Russian 1933 Nag 136 34 Cr L J 505 1933 Cr C 610

——the Sessions Judge cannot interfere with a Magistrate s decision as to the applicability of Chap XXXIII to a particular case 1932 Lah 490 33 Cr L J 529 1932 Cr C 628

S 449 Special provisions relating to appeal

——the ordinar
of the appellate C
subject is concerned
XXXIII an appea
a matter of law and the H C cannot therefore refuse to entertain an appeal on a matter of fact inspite of the fact that the jury s verdict convicting the accused is unanimous and concurred in by the Judge But the appellate Court must give full weight and consideration to the unanimous opinions of the Judge and the jury 1936 Nag 103 37 Cr L J 607 1936 Cr C 605

——the right of appeal in a case tried by jury under Chap XXXIII Cr P C is not created by s 449 The right of appeal against an order of acq[illegible]

Art 157 L Act is to fix the period of limitation in respect of such appeals at six months in all classes of cases whatever may have been the form of trial and whatever may be the scope of the appeal The only effect is that by reason of the provisions of s 449 its scope extends to questions of fact as well as to questions of law 38 C W N 854 35 Cr L J 1367 59 C L J 482 1934 Cal 610 1934 Cr C 908

S 449 Special provisions relating to appeal—*contd.*

——the right of appeal under s. 449 (1) (a) depends, not upon whether in certain circumstances the accused might have been tried under the provisions of Chap XXXIII, but whether he was in fact so tried, and as regards any question as to whether the trial is rendered invalid by reason of the alleged failure of the committing M to comply with the provisions of s 447, that matter is concluded against the accused by s 534 *1935 Rang 67 36 Cr L J 595 1935* Cr C. 167 **F B**

a jury in 9 (1) (a), it had duly iquiry etc.

1935 Rang 67 36 Cr L. J 595 1935 Cr C. 167 **F B.**

S 464 Procedure in case of accused being lunatic.

——the provisions of the sec are mandatory Hence where a M. ... House ... cannot ... annot be ... nination ... ied In ... ebutting the evidence given by the Civil Surgeon 1933 Oudh 302 · 34 Cr L. J 914 1933 Cr C. 1042

S 465 Procedure in case of committed accused being lunatic

——*where a verbal application is made by the pleader for* the accused for an adjournment in order that the accused may be kept under mental observation, but the accused appears to the Judge to be perfectly normal in mind it is not necessary, much less is it incumbent upon the Judge, to grant an adjournment and to hold an inquiry 41 C W. N. 1312

S 466 Release of lunatic pending investigation or trial

——a M. is not empowered to add any other condition not mentioned in s 466 (1) in ordering release He has no power to pass a *conditional order of release or that "a respectable gentleman* should take care of the accused outside Karachi. 1933 Sind 267 1933 Cr C 941

S 471. Person acquitted on such ground to be kept in safe custody

——s. 471 contemplates the committing of a crime but by a person who owing to the state of mind cannot be deemed to have known the quality of his act Where the offence with which the accused is charged cannot be said to have been committed, because the accused is not

S 471 Person acquitted on such ground to be kept in safe custody—*contd*

shown to have had the criminal knowledge necessary to constitute the offence, it being impossible to know whether the accused realised the quality of his act, the case does not come under s 471 and therefore cannot be referred or reported to the Local Govt 1935 Pat 451 1935 Cr. C 1168

furnishing a security for his good behaviour, held that the order was in *contravention of s 471 Cr P C and the accused should have been* detained in safe custody in the lunatic asylum 1938 Rang 96

S 473 Procedure where lunatic prisoner is reported capable of making defence

——a certificate of the visitors of lunatic asylum or Mental Hospital in the prescribed Govt form and signed by the visitors and by the Supdt of the Hospital, comes within the provisions of s 79 of the Evi Act and is a public document the genuineness of whicl is to be presumed in view of s. 473 Cr P C No formal proof of such document is necessary. 63 C 425

S 476 Procedure in cases mentioned in sec 195

Scope and application of the sec

——the provision of the sec is mandatory and the Court should record a finding that it is expedient in the interests of justice that an enquiry should be made 1932 M W N 1081 140 I C 323 33 Cr L J 960 1 R 1932 Mad 851

——the words it is expedient in the interests of justice that an inquiry should be made ' are the keynote of the sec and in order to prosecute a man it must be shown that he has not merely given evidence which is contradictory or which has not been believed but evidence which is intentionally false, so as to form the basis of an enquiry, 1932 Bom 551 34 Bom L R. 1247 140 I C 619 1932 Cr. C 783

——unless it is expedient in the interests of justice that an enquiry should be made into the offences, a complaint made under s 476 is not maintainable 1933 Cal 147 1933 Cr C 224 34 Cr L. J. 684, 1934 Sind 155 1934 Cr. C 1147

——the first question which an officer intending to act under s 476 should put to himself, is the question whether it is expedient in the interests of justice that an inquiry should be made 1933 Sind 412 1933 Cr C 1545 1934 All 385 35 Cr L J 785 1934 Cr C 464

——ss 476 and 195 are intended really to prevent indiscriminate prosecution under various sections mentioned therein Once the bar i removed there is no difference between the cases mentioned in ss 47

S 476 Scope and application of the sec —*contd*

and 195 and any other case *e g* if a complaint is filed under s 471 I P C and it appears that some other offence has also been comn tted it is not necessary to have a fresl complaint 1934 Pat 536 1934 Cr C 1191

' Civil Revenue or criminal "

——a special Tribunal has jurisdiction to l old an inqu ry record a finding and make complaint both as regards the statement in its own Court and the statement before M under s 164 1934 Lah 981 1934 Cr C 1375

——the power to make a complaint under s 476 is not among the powers specified in Schedule III and IV of the Cr P C and is not *a magisterial power for it can be exerc sed as well by Civil or Revenue* Courts as by Criminal Courts 1936 Pat 346 37 Cr L J 893 1936 Cr C 539

' In or in relation to a proceeding in that Court "

——the words in or in relation to are to be widely interpreted They cover statements made under s 164 Cr P C ai d statement made as a witness in the course of a trial f the two statements are contra dictory 1933 M W N 896 1933 Mad 125 34 Cr L J 92 1933 Cr C 157 1933 Mad 767 1933 Cr C 1373 1934 Lah 981 1934 Cr C 1375

——s 476 would apply when the offence is committed not only in a proceed ng in a Court of law but also in relation to a proceed ng n such Court The same remarks apply to s 195 (b) 1933 All 518 34 Cr L J 686 1933 Cr C 484

"Such Court may make a complaint"—Power of successor in office

——the intention of tl e Code is that proceedings under s 476 should be initiated if possible by the Judge in whose presence tl e offei ce is comm tted 1933 S id 412 1933 Cr C 1545

——where contrad ctory statements were made before the com mitting Magistrate and the Sessio is Judge the latter had jurisd ction to direct the prosecution 55 M 536 33 Cr L J 519 1932 M W N 724 1932 Cr C 469 1932 Mad 494

——t is only the Court before whom offences of perjury and bring ng a false complaint were said to have been comm tted that can take act on under s 476 The Dt M has no authority to make a compla nt in respect of the offences alleged to have been comm tted before the Dy M 1934 Oudh 344 1934 Cr C 1015 35 Cr L J 824

Application dismissed for default

——where an application asking a Court to make compla nt is d smissed for default by the Court and the appl cant takes no steps to get the order of d smissal set asid• wh ch l e could have done either

S. 476 Application dismissed for default—*contd.*

by asking the Court to set aside its *exparte* order or restore his application or by appeal to the superior Court, it is not open to the superior Court to entertain another similar application and make a complaint The superior Court can take action only if the lower Court had neither made a complaint itself nor rejected the application for the making of one. 1938 Lah. 429

"Preliminary inquiry."

——a preliminary inquiry is discretionary under s. 476. In a case where *prima facie* case has been made out, a preliminary inquiry is not necessary. 1934 Pat. 536 1934 Cr. C. 1191

——the sec. makes provisions for a preliminary inquiry, but the making of the inquiry as well as the extent of it is entirely at the discretion of the Court. Nor it is essential that the inquiry should be in the presence of the accused or after notice to him 1935 Oudh 113 : 36 Cr. L. J. 319, 1937 Pat. 534

——the opposite party should be given a chance to show cause against the proposed prosecution. For an order of prosecution it is not necessary that there should be reasonable hope of the accused being convicted by a criminal Court 1934 All. 385 1934 Cr. C. 464 35 Cr L J 785.

——it is within the discretion of the Court to hold preliminary inquiry or not to hold such inquiry Even where an inquiry is made it is not necessary that it should be detailed or formal, and an objection on the former of omission to hold an inquiry which is not raised until after the conviction is without substance. 1935 Pat 515 . 36 Cr. L J. 1354 1935 Cr. C 1273

——it is only where the Court is expressly of opinion that it is expedient in the interest of justice that an inquiry should be made into the offence of giving false evidence that an order under sec. 476 can be made Where, therefore on receipt of an application under s. 476 the M. without any inquiry or opportunity to the party concerned drew up a complaint addressed to another M , the procedure is illegal 1934 Oudh 272 : 1934 Cr C. 768 35 Cr. L J 908

——where the order depends upon matters already on record, no preliminary inquiry is necessary, but when it depends upon evidence of the facts which are not on the record, in fairness to the accused, a preliminary inquiry must be held in his presence 1937 Rang 62 38 Cr. L. J. 615

Jurisdiction

——petition was presented before a M. alleging that the accused had caused a false entry to be recorded in the death register of a police station. M. called for report from police, accused produced a forged document. M. convicted the accused on charges under s. 465 and 471 I. P. C , held that the M had no jurisdiction to take cognizance of it. 1934 Pat. 156 : 35 Cr. L. J. 1309 1934 Cr C. 340

S 476 Jurisdiction—*contd*

——a money decree passed by subordinate Judge was sent to the Collector for execution The Mamlatdar was holding the sale in the course of which a false receipt was produced The Mamlatdar launched a prosecution under ss 467, 114 and 471 I P C, held that the offence was committed in relation to the proceedings in the Court of the Subordinate Judge and not before the Mamlatdar 59 B 345 1935 Bom 158 36 Cr L J 1005

——where an accused suborned evidence during commitment proceedings before sub-divisional Magistrate and the Session Judge tried the case the sub divisional M can file a complaint under sec 476 1937 Pat 534

——once a commitment has been made in pursuance of a complaint it is too late for the accused to take an objection that the M who preferred the complaint had no magisterial powers on that date The objection ought to be raised earlier before the order for complaint is made And when the accused do not appeal against the order they have no other remedy 1936 Pat 346 37 Cr L J 893 1936 Cr C 539

——a complaint under s 195 read with sec 476 discloses the Court before which and the occasion on which the offence is alleged to have been committed 1932 Pat 243 13 Pat L T. 370 1932 Cr C 640 33 Cr L J 860

——application under s 476 rejected by Court—order set aside by Dt Judge on appeal and case sent back for inquiry, trial Court is not precluded from filing complaint after inquiry by reason of previous refusal to file complaint 1938 Pat 99

Limit of time for making order under this sec

——in some cases the Court might refuse to take proceedings on the ground that an application was unduly delayed but this is a matter of discretion to be exercised in the circumstances of each case 1933 Oudh 430 1933 Cr C 1315

[illegible] Court only in [illegible] ion or shortly [illegible] 1934 Oudh

——the sec does not limit the time within which action should be taken There is no hard and fast rule laying down that an order of prosecution should be set aside on the ground of delay 1935 Oudh 113 36 Cr L J 319 1935 Cr C 203

—— [illegible] rosecution is laid [illegible] delay to move the [illegible] o the application [illegible] 1937 Rang 62 38 Cr L J 615

S. 476. Limit of time for making order under this sec —*contd*

[illegible]

nothing to warrant that an action under s 476 is to be taken before close of the proceedings or in strict continuation with them or within any particular time Nor is there any justification for the view that only application prompted by high motives are to be entertained 1938 Lah 429

Nature of proceeding under this sec.

——under the law a Judge is only entitled to forward a complaint to a M who has jurisdiction 1938 Cal 463

——if a Court makes a valid complaint under sec 476 there is no [illegible]

——where after holding an inquiry the Court passes an order under s 476 that a complaint should be made under s 193 I P C but omits to express in so many words the opinion that it is expedient that [illegible] t has acted [illegible] 36 Cr L J [illegible] offences and not of offenders and a M who has legally taken cognizance of an offence under s 476 has jurisdiction to proceed against any one who might be proved by the evidence to be concerned in the offence, whether he was mentioned in the order or not, even if the Court making the complaint may have refused to make a complaint against such person 63 C. 819 40 C W N 573 1936 Cal 147 1936 Cr C 289

——proceeding under s 476 regarding the institution of a complaint ought not to be undertaken on the application of private persons unless the prosecution is in the interest of public justice 1935 O W N 444

——a private complaint can be made against a person who abets an offence for which the Court s sanction should in the first place be obtained under s 195 Cr P. C 1934 Sind 78 35 Cr L J 1251

——the Court once having been moved it is then a question for the Court to decide and not for the parties themselves The fact that the legal representatives of the plff do not desire to take part in the proceedings on any application under s 476 does not make any difference 1936 Mad 350 37 Cr L J 557 1936 Cr C. 358

——complaint to Dt M under s 476 in circumstances in which s 476 is inapplicable is invalid but the M can proceed under s 190 (1) (c) 1938 Pat 83

S 476 When order under this sec should be made and when not

——where a witness makes false statements before the police under s 164 and before the committing M but retracts the same in the Sessions Court as being false and the retracted statements are found to be false, the prosecution of such witness under s 193 I P. C is inexpedient in the interests of justice 1933 Nag 179 34 Cr L J 649.

——it is necessary that the desirability of prosecuting the offender should be present in the record of the Court during the proceeding in ... ts notice It ... the attention ... So also no ... le probability ... 551 F B,

—— in a suit on a promissory note in a Small Cause Court the promissory note was found to be not genuine and the attestors were ordered to be prosecuted under ss 467, 114 and 193 I P C held that the question being purely a matter of oath against oath and the record of evidence being merely notes of evidence, it was not expedient to prosecute them 1935 Mad 1044 1935 Cr C 1287

——*sanction should not be given ordinarily in cases of oath against oath* 1933 M W N 1257, 1935 Mad 1044 1935 Cr C 1287

——where a witness makes contradictory statements in the committing M's and Sessions Court it cannot always be supposed that the subsequent statement is the true one 1935 Nag 145 1935 Cr C 830 1933 Nag 179 *Diss from*

——mere contradiction alone in the deposition of a witness will not justify a prosecution for giving false evidence 1934 Sind 155 1934 Cr C 1147

——a complaint cannot be made against witnesses who are not parties to the suit in which the offence is disclosed 1935 Mad 1044 1935 Cr C 1287

... and where a ... iself has done ... decline to take ... 3 Cr C 1545

39 I. C 320 *Rel on*

——every case of perjury need not necessarily result in the prosecution The Court should see that it is for the interest of justice and not to satisfy a private gruge of a litigant 1937 Lah 867

——mere suspicion is not enough for start ng a prosecution which must inevitably fail for want of proof 1934 Oudh 377 35 Cr L J 1163 1934 Cr C 1277

——a prosecution of a person under s 476 for perjury cannot be held to be not expedient in the intersest of justice on the ground that he is an old man of over 70 years and that he has been editing his

S 476 When order under this sec should be made and when not—*contd*

paper for some 50 years, although such circumstances may justify his lenient treatment. 1935 All 608 36 Cr. L J 781 1935 Cr. C 605.

——it is in the interests of justice that a man who brings a false charge of murder against any person should be prosecuted under s. 211, I. P. C. if a *prima facie* case is made out 35 Cr. L. J. 1392 35 P L. R. 593

——where in a suit to enforce registration of a deed of settlement the trial Court passed a decree relying on the evidence given before the [illegible]

and the attestors were not parties to the proceedings and therefore Cl (c) of sec 195 (1) had no application, (3) that a complaint could however be lodged against the pltf 57 M 682 1934 Mad 316 35 Cr. L. J 780 1934 Cr C. 606.

Revision.

——objection to initiation of proceeding under s 476 must be taken at the earliest stage, when the validity of the complaint is not questioned in trial or appellate Court, it cannot be challenged in revision 1938 Pat 99

——when an order withdrawing the complaint is made by the Dt. Judge, the application in revision against that order is governed by sec 115 1935 Pat 55 35 Cr. L J 432 1934 Cr. C 83

——when the trial Court makes an order of complaint but the appellate Court finds that on the materials on the record there is no hope of conviction, it has jurisdiction to set aside the order though it does not in term find that the prosecution was not expedient in the interest of justice and the H. C cannot interfere in revision 1934 All 1065 1934 A. L J 870 [illegible]

Appeal.

[illegible]

Court is *functus officio.* 1935 Oudh 59 36 Cr. L. J. 254 1935 Cr. C. 113.

S 476 Appeal—*contd*

——where a Court has made a complaint, and no appeal is preferred against it under sec 476 B, it is not open to the accused to challenge the complaint itself before the M 1936 Rang. 363 37 Cr L J 1008.

[illegible] forged

Cr L J 476

——where in a case under sec 476 the judgment of the Court of appeal ran thus Heard the appellant I do not think it is necessary to direct prosecution of the respondent in this case Appeal dismissed held that the provisions of sec 367 Cr P C were not complied with and judgment was bad 35 C W N 660 1931 Cal 454 133 I C 672 32 Cr L J 1045 1931 Cr C 606 I R 1931 Cal 736

——the remedy open to a person aggrieved by a complaint under sec 476 Cr P C should be limited to an appeal under sec 476 B and it is not permissible to call the complainant in quest on during appeal against conviction 55 C L J 336 1932 Cal 545 1932 Cr C 545 140 I C 544

——refusal of munsiff to file complaint under sec 476,—appeal can be heard by the Subordinate Judge 1938 Cal 463

S 476 A Superior Court may complain when subordinate Court omits

——an Additional District M has no jurisdiction to take any proceedings under sec 476 A, Cr P C or to institute a complaint in respect of an offence under s 192 I P C. committed in the Court of a Second Class M as the latter cannot be deemed to be subordinate to the former 1935 Pat 176 38 Cr L J 97

——the subordinate Judge not being the Court to whom appeals from order of the Munsiff ordinarily lie he has no power *suo motu* to make complaint under sec 476-A on appeal from the order of the Munsiff transferred to him by the Dt J 1934 Pat 366 35 Cr L J 1061 1934 Cr C 798

S 476-B Appeals

——an appeal lies under sec 476 B to the Sessions Judge when a complaint is filed under s 476 by the trying Magistrate *suo motu* 37

S 476 B Appeals—*contd.*

Cr L. J 1043 1936 Cr C 796 164 I C 1057 38 P L. R 16 1936 Lah 828, 11 Lah 55, *followed*

Court in
Court ca
the pow
52, 1938 Pat 99

——an objection to the institution of proceedings under sec 476 *must be taken at an early stage* 1938 Pat 99 1936 Pat 346, 1929 Cal. 203, 1932 Cal 545

the
Cr ign
to -B,
Cr P C, by general or special order in his distribution of business, and when an appeal has in that manner been assigned and made over to the Additional Dt Judge the latter exercises the same powers as the District Judge and has jurisdiction to hear the appeal and make an order directing the withdrawal of a complaint made by the lower Court. 37 Cr L J 838 1936 Cr C 581 163 I C 451 17 Pat L T 276 1936 Pat 382

——the District
jurisdiction, the Cou
subordinate to the I

and the
in this
66 161

Dt Judge himself had jurisdiction under sec 195 (3) Cr P C to hear the appeal and that the Subordinate Judge had no such jurisdiction though he signed as Additional Sessions Judge" as he was really
nch was not
therefore his
Cr C 594
All 446
urt to which
s 195 (3) an
Judge and
a Subordinate Judge cannot hear the same on transfer by the District Judge 34 Cr L J 410 142 I C 621 14 Pat L T. 131 1933 Cr. C. 510 I. R 1933 Pat 161 1933 Pat 179

S 476 B Appeals—*contd*

——where an appeal is made in the Court of Dt Judge against the order of the Munsif directing that a complaint should be lodged under sec 476 Cr P C, the Dt Judge has no power to transfer the appeal to a Court subordinate to him as in a case like this one should look for the power of transfer, not to any Civil enactment but in the Cr P C which does not provide for any transfer in a matter like this. 36 Cr L J 1253 1935 Cr C 255 1935 All 212

——sec 476 Cr P C gives a Court power to make a complaint only of an offence referred to in s 195 (1) (b) or (c), and the offence under sec 183 I P C, is not referred to in that section and therefore no appeal lies to the Dt Judge under sec 476 B, Cr P C against an order of a Munsif refusing to make a complaint under sec 183 I P C, on a report of a process serving peon An order passed by [illegible] jurisdiction and [illegible] order to the [illegible] jurisdiction to [illegible] ch interference is called for 38 Cr L J 292 166 I C 870 1937 Pat 31

—— [illegible] t relating to [illegible] Judge under [illegible] lecree in the [illegible] Collector is [illegible] pealable only [illegible] L J 1136 1934 A L J 607 1934 Cr C 1110 150 I C 775 1934 All 886

——the jurisdiction of the Court of Sessions arises under sec 476 B only when a Court subordinate to it has directed the filing of a complaint or refused to make a complaint under sec 476 or 476 A Cr P C so where no application has been made to the lower Court and that Court had never any occasion to express its opinion on the expediency or otherwise of a prosecution, the Session Judge has no power to make a complaint 35 Cr L J 824 11 O W N 490 148 I C [illegible]

—— [illegible] A does not require [illegible] C 1005 37 P L R [illegible]

[illegible] before [illegible] issioner, [illegible] isdiction [illegible] alleged [illegible] fter the abolition of the Election Court An order of the Dt Judge refusing to file a complaint is appealable under sec 195 (3) and s 476 B to the High Court. 36 Cr L J 895 1935 Cr C 914 58 Mad 954 156 I C 311 1935 M W N 152 69 M L J 589 1935 Mad 673

S 476 B Appeals—*contd.*

——where the S C C refuses to make a complaint under sec. 476 Cr P. C an appeal lies to the District Court under sec 195 (3) of the Code 1937 Rang 526

——s 476 B empowers the appellate Court to examine a witness and take evidence for a proper decision of the appeal, but does not empower to set aside the order of the lower Court and remand it to that Court for further evidence being taken and the case being decided afresh This sec does not contemplate a power of remand in the appellate Court for further inquiry and reconsideration by the Subordinate Court 38 Cr L J 561 I L R (1937) All 517 168 I C 434 1937 A L J 192 1937 All 305 **F B**

——the appeal from an order of Civil Court refusing to make [illegible] n appeltate Court [illegible] l is governed by [illegible] appellate Court [illegible] 169 I C 816 1937 Nag 91

——an appeal from the sentence of an Assistant Sessions Judge lies to the Sessions Court and not to the H C 37 C W N 192 1933 Cal 192 1933 Cr C 243

——in an affirming judgment it is not essential that the appellate Court should find that the prosecution is expedient in the interests of justice 1933 M W N 1257

——in an appeal under this sec in a Civ l proceeding the appellate Court has power to remand the matter back to the lower Court for disposal Case laws discussed 1933 M W N 1476 65 M L. J. 873, **F B**

—— [illegible] the Sessi[illegible] to be pr[illegible] separate [illegible] Cr C 157 34 Cr L J 92 140 I C 756 I R 1933 Mad 43 1933 M W N 100 1933 Mad 125

——although it is very peculiar that a Judge of the High Court should have to direct the filing of and sign complaint under sec 476 after hearing the appeal, but the law has to be administered and he may do so 36 Cr L J 1485 1935 Cr C 1039 1935 Lah 677 1925 Lah 312 *Rel on*

——no appeal lies to the H C from an appellate order passed by the Dt J directing a prosecution under sec 476 B Cr P C. 36 Cr L J 981 1935 Cr C 295 59 Bom 340 1935 Bom 157

——the Cr P C provides for no remand in appeal under sec 476 B of the Code and the appellate Court cannot make a remand to the trial Court but the appellate Court may itself make an inquiry in a

S 476 B Appeals—cont'd

case where it comes to the conclusion either that the trial Court has made no preliminary inquiry at all or has made a defective inquiry 1937 Rang 526, but see, 1938 Pat 99, 1933 Mad 767, 1934 Mad 51

——an appeal does not lie to the H C from an order of the District Magistrate directing a prosecution under s 193 of the Penal Code passed on an appeal from the order of the Sub-District Magistrate refusing to make a complaint It was never the intention of the legislature to provide two first appeals 18 Pat L T 917, F. B

——except in the case where the Dt Judge acted in the exercise of his jurisdiction illegally or with material irregularity bringing the case within the purview of s 115 C P C no revision lies to the High Court against the order of the Dt Judge under sec 476 B Cr P C 170 I C. 125 1937 A L J 10

——an application in revision from the order under s. 476-B by Civil Court to the H C should be heard and decided in accordance with the provisions of sec 439 and not in accordance with the provisions of sec 115 C P C 1935 Bom 225 F B

——the H C will not lightly interfere in revision with the discretionary power of the lower court in the matter of prosecution 1932 Pat. 243 L R 1932 Pat 245 13 Pat L. T. 370 139 I C 543 1932 Cr C 640 33 Cr L J 560

S 480 Procedure in certain cases of contempt

——in order to bring a case within s. 228 I P C. and sec. 480 Cr P C it must be shown that the accused intentionally offered an insult to the Court Where an assessor was shown to have appeared in a dress consisting of a *pakeran* a cap and a scarf and he stated that he had no intention to insult the court, the accused was not guilty as there was no rule as to the dress 1933 Bom. 478 19 5 Cr C. 1552

S 482 Procedure where court considers that case should not be dealt with under s 480

——proceedings under s. 482 need not be drawn up on the day on which the offence occurs There is no provision in this section as there is in s 480 that the Court should take proceedings the same day as that on which the offence is committed 1936 All 762 1936 Cr C. 1003

S 487. Certain Judges and Ms not to try offences refferred to in s 195 when committed before themselves

——a M cannot try a person for an offence under s. 174 I P C. for disobedience of his summons The prohibition under s. 487 Cr P. C is absolute and the consent of the accused is immaterial 1934 Lah 545 1934 Cr C 865.

S 488. Order for maintenance of wives and children.

Sub sec. (1)

"Having sufficient means".

——the term "sufficient means" is not confined to pecuniary resources and a mere denial by a man himself of sufficiency of means, when that man is an able bodied man, is not conclusive proof of want of sufficient means 1933 Rang 138 34 Cr L. J 815 1933 Cr. C. 728 **F B** 1932 Rang. 94, 1936 Nag 228 1936 Cr C 913

——the words "sufficient means" ought not to be confined to the actual pecuniary resources, but should have reference to the earning capacity. 18 N L. J. 107 159 P. C 120

"Neglects or refuses to maintain his wife etc"

——a man is not and ought not to be, permitted by his own voluntary act to free himself from the elementary duty of maintaining his wife and children and a *poonghyi* is therefore amenable to the provisions of sec 488 notwithstanding the fact that he has adopted the yellow robe and become a member of the *sangha* 1933 Rang 138 34 Cr L J 815 1933 Cr. C 728 **F. B**

——where the minor
of their mother who is the
of the father to mainta
entrusted to his custody
sec. 488 and the father
Court may take notice of the guardianship 1933 Lah 969 1933 Cr. C 1457.

——a Mahamedan father is bound to maintain his minor children to the custody of whom the mother is entitled The fact that the wife had separated from the husband and would not come and live with him is no ground for refusing to pass an order in favour of the children 1937 Lah 236 38 Cr. L. J 672

——a *Jaina* cannot defeat the right to maintenance of his wife by taking the vows and becoming a *sadhu* 56 B 260 1932 Bom 285 131 I. C. 517 33 Cr. L J. 625 1932 Cr C 397 34 Bom L. R 587

——a *poonghyi* is amenable to the provisions of s 488 notwithstanding the fact that he has adopted the yellow robe and become a member of the *sangha* 1933 Rang 138 1933 Cr C. 728 **F B**

——a maintenance proceeding or an order for maintenance may be defeated by the husband by giving a talak 59 C 833

"His wife"

——under this sec a wife can only claim maintenance. She cannot claim to be treated "as a wife" Where, therefore, the husband offered to maintain his wife but wanted her to live in a separate and she refused the offer, she is not entitled to an order for allowance 56 M 913 1933 Mad 688 34 Cr L J 950.

S 488 "His wife"—*contd*

[illegible] to a Hindu of [illegible] her child held [illegible] the wife would [illegible] to maintain [illegible] and child on being satisfied from the evidence that the parties who were born Indian Christians were Hindu converts at the time the marriage was celebrated with appropriate Hindu rites but the husband contended in revision that such a marriage could not be legally celebrated, held, that the husband, if he wished to impeach the validity of the marriage should bring a declaratory suit in civil Court and the order of the M. was good 41 C W N 898.

——mere long co-habitation does not give rise to any presumption of legal marriage 1934 Rang. 166 35 Cr L J 1502 1934 Cr C 783 1937 M W N 1131.

——a dancing girl once dadicated to a temple can re marry and hence there is no bar to award her maintenance 1937 M W N 735

——the H C will be very loath to interfere with a finding of fact as to whether there was a valid marriage between the parties, for the party aggrieved may always file a suit But the H C must interfere, if the M awards maintenance to a woman and does not justify his action by a definite finding that she is the wife of the person ordered to pay maintenance 1938 Mad 66

"Legitimate or illegitimate child"

——child means a person who is incompetent to enter into any contract or to enforce any claim under the law A person who has not attained majority is a "child ', it is not limited to an infant who has not attained puberty 62 C 639 61 C L J 141 39 C W. N 432 1935 Cal 488 1935 Cr C 880

——a boy below 18 can be considered to be a child under s 488 so long as he is not able to maintain himself. 1933 Lah 1026 A Mohamedan girl who is of an age between 15 and 16 is not a child able to maintain herself and is therefore entitled to maintenance 1937 Rang 518

—— [illegible] child" of [illegible]

——the word ' child" merely expresses a relat onship which may exist whether the child is under the age of majority or over the age of majority A child which has reached majority may for some reason be unable to maintain itself, in which case the parent will under s 488 be liable to maintain it 1937 Rang. 370.

S 488 "Legitimate or illegitimate child"—*contd*

be considered 1935 Rang 277 36 Cr L J 1391

——when a minor child lives with the mother after dissolution of marriage, the father can be ordered to pay maintenance of the child 1937 Rong 205 38 Cr L J 782

Unable to maintain itself".

——a Mohamedan wife applied for maintenance for herself and her children The M found that the husband made a *bona fide* offer to maintain them in his own house which the wife unreasonably refused to accept and dismissed the application held that the M should have awarded maintenance at least to the children who could not be taken to live with their father separately from their mother, the legal guardian 1937 Mad 809 1937 M W N 565

1114

"Monthly allowance"

——the parties cannot contract themselves out of the statutory obligations to maintain children under the Cr P C The fact that s 488 sub sec (1) refers to monthly allowances and monthly rates of allowance merely shows that the Court has taken the month as a convenient unit whereby to calculate allowances Where matter has been referred to arbitration a lump sum can be paid for the maintenance of a child but it is not a complete answer to future application by the guardian 1937 Rang 246 38 Cr L J 913

"Not exceeding one hundred rupees".

——the fact of mentioning Rs 100 a month as the maximum

370

——the maximum amount which a M may award any husband or father to pay is Rs 100 per mensem whether the application be made on behalf of wife and children or on behalf of wife or on behalf of a single child It is not correct to interpret the

S 488 Not exceeding one hundred rupees —*contd*

as meaning that Rs 100 a month may be awarded to each member of a man s family 1937 M W N. 1127

——in criminal law maintenance would not include the cost of college education 1933 Lah 1026

Sub sec (3) Enforcement of order

——an order refus ng to enforce the maintenance order in respect of arrears of maintenance for one period does not operate as a bar to a subsequent application to enforce the order for arrears of maintenance that have accrued during a d fferent and a later period 1933 Rang 138 34 Cr L J 815 1933 Cr C 728 F B

——a person committed to jail under s 488 (3) Cr P C is not a civil debtor but a prisoner in the ordinary sense of the term and can only be released at the end of the term or when he pays the amount The M has therefore, no power to direct the person enforcing the order of maintenance to pay his expenses in jail 36 P L R 191

——a second class Magistrate is not competent to pass a sentence of imprisonment for breach of an order for maintenance The power to enforce such an order does not necessarily include the power to sentence the person against whom it is passed to imprisonment 1935 Mad 572 36 Cr L J 830 1935 Cr C 875

——arrears of maintenance payable under an order under sec 488, are neither a debt nor saleable property within sec 60 and are not therefore l able to attachment in execution of decree for money The right created by the order under s 488 is a personal right and is not assignable 39 C W N 281 1935 Cal 578 62 C 404 1935 Cr C 1002

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1937 Lah 367

Sub sec (3), Proviso (1), Grounds of refusal

al ill treatment
house when he
Rang 192 30

——non payment of prompt dower by husband is not sufficient ground for a Mahamedan wife to claim separate maintenance against a husband who is willing to maintain her upon condition of her living with h m Sec 488 provides a statutory right and cannot be affected by personal law 1935 Oudh 285 36 C. L J 524 1935 Cr C 586

S. 488. Sub-sec. (3), Proviso (1), Grounds of refusal—*contd.*

——sec. 488 has nothing to do with conjugal rights and a wife cannot exact a promise of sexual fidelity before she returns to live with her husband and refuse his offer to take her to live with him on the ground of his not giving up a mistress. 1937 Mad. 794, *contra*. 1937 M. W. N. 984

Rang 36. 1935 Cr. C. 955.

——husband lived away from his wife as he had frequent quarrels, wife sued for judicial separation but it failed, thereupon wife applied under sec. 488, belated offer of the husband to maintain his wife on condition of her staying with him was held to be not *bonafide* one, and the failure of suit for judicial separation did not alter the position. 1938 Rang. 25.

——an order for maintenance in favour of a wife, ignoring altogether the offer of the husband to take back his wife and without inquiring from the wife if she was willing to go to her husband and

na fide or the reason

was sufficient, was

necessary procedure.

Sub-sec. (3), Proviso (2)

——where the respondent applied for arrears of maintenance for 4 months but the case had to be closed as the applicant could not be traced, a subsequent application by her for 15 month's maintenance in arrears is maintainable The object of proviso (2) discussed. 1935 Rang. 407 1935 Cr. C. 1192

Sub-sec (4) and (5)

"She is living in adultery"

——"living in adultery" means something quite different from

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S 488 Sub sec (4) and (5)—*contd.*

from virtue would be acts of adultery but not ' living in adultery 1936 Rang 446 37 Cr L J 1115 1936 Cr C 864 1937 M W N 1131 But where a child was begotten when the husband could not get access to the wife, held that the wife must have been guilty of adultery on more than one occasion and therefore he was not entitled to any maintenance 1937 Rang 67 38 Cr L J 646

"Without any sufficient reason"

——where the husband left the wife in the house of her mother after assulting her and lived apart from her for a long period and the husband s offer to take his wife is not *bona fide* but is made s mply with the object of escaping liab lity there is ' sufficient reason for the w fe to refuse to live with him 66 Cr L J 567

"She refuses to live with her husband" *See cases under sub sec (3) Proviso (1)*

"Mutual consent"

——an agreement by the husband to pay half of his salary every month to his wife as maintenance is not by itself evidence of a mutual agreement to live apart 66 C L J 567

—— mutual consent ' in cl (4) means a consent on the part of the husband and wife to live apart no matter what the circumstances may be 1937 All 115 38 Cr L J 312

——f each party finds it impossible to live amicably and comfortably with the other and each party is content that they should *live separately the separate living is by mutual consent* 1935 Rang 359 1935 Cr C 1083

Sub sec (5)

——an order for maintenance which had been in force for 20 years cannot be questioned by the husband so long as it was not set aside or altered under s 489 or s 488 (5) Cr P C 1931 Lah 574 132 I C 854 32 Cr L J 993 27 Bom L R 196 *Ref*

——where an order directing a husband to pay maintenance to his wife is made and that order is subsequently cancelled under s 488 (5) the order of cancellation takes effect from the date of the order and has no retrospective operation It cannot therefore affect the arrears due up to the date of the order 1938 Cal 144

Sub sec (6)

Procedure

——proceedings under s 488 are not criminal proceedings 1935 Rang 277 36 Cr L J 1391 1935 Cr C 982

——non examination of accused under s 342 owing to accused s failure to appear and cosequently the passing of *exparte* order for maintenance are not invalid 1932 Cal 488 I R 1932 Cal 477 1931 Cr C 180 138 I C 629 36 C. W. N 380.

S 488 Compromise and its effect

——an order for maintenance can properly be passed based on a compromise only where the compromise does not cover matters outside the purview of sec 488 Cr P C A judicial order based on compromise must be one giving the compromise effect as a whole 1934 Lah 864

——an order for maintenance does not become illegal merely because it is based on a compromise of which one term is that the wife will live separate or that she should not go into service or cook for others Where the order is given effect to in favour of the wife she must abide by the terms of the settlement 37 C W 538 1933 Cal 675 1933 Cr C 1157, 60 M L J 213 1931 Cr C 226 131 I C 173 *1937 All 115 38 Cr L J 312 if the conditions are not satisfied* that in itself might be a suffic e t cause for non payment and the M for that reason might refuse to enforce h s original order 1937 All 115 38 Cr L J 312

——even where an order for maintenance is based on a compromise the procedure under s 488 is available and the wife need not sue in Civil Court to enforce the terms 1933 Oudh 122 34 Cr L J 238

——where in a proceeding for ma ntenance the parties enter into a compromise the enforcement of the compromise comes w th n the jurisdiction of a Civil Court and not a Criminal Court and the M cannot incorporate the compromise in his order 37 C W N 736 1933 Cal 776 1933 Cr C, 1327

——where the parties arrive at a compromise as to tl e amount of maintenance and nothing else a M can pass an absolute order under s 488 based on such a comprom se 1935 All 294 1935 Cr C 327

Re union

——re union does not automatically vacate tl e previous order The length of time during which re union lasts is hardly relevant The parties may contemplate a complete permanent re un on and yet quarrel and separate again after a short interval 1936 Nag 228 1936 Cr C 913

——the mere fact that tl e wife returns to live with her husband does not bring the order of maitenance to an end automatically and on her separating again she can enforce it The order stands so long as the husband does not obtain the cancellation of tl e order 1935 All 977 1935 Cr C 1197

Sub sec. (9) Jurisdiction

——the terms resides and 'last resided in cl (9) mean both permanent as well as a temporary residence But there is no warrant for hold ng that the mere hiring or purchase of a resident al l ouse at place would confer jurisdiction on a M of that place to entertain application against the owner or hirer of the house under s 488. Bom 35 38 Cr L J 248

S. 488. Sub-sec. (9). Jurisdiction—*contd.*

——a Court within whose jurisdiction the parties have their [illegible]

1933 Cr. C. 270

——that Court has jurisdiction where the husband is actually [illegible] that the father of [illegible] ing to do. 1933

[illegible] f 1921 confers no [illegible] they think fit as [illegible] ndia but whose [illegible] 1127, [illegible] a Civil Court of [illegible] has jurisdiction in all cases of desertion and neglect with power to order only that immediate bare necessities be provided; he has no power to settle finally the rights of the parties which can only be done by a competent Civil Court. 1937 M W. N. 1127

——the fact that an applicant, such as a wife, applies for an order to direct her husband to pay an amount more than Rs 100 a month as maintenance for herself and her child, does not oust the jurisdiction of the M. to entertain the application at all 1937 M W. N. 1127.

Reference.

——in a case of reference under s 488, it is desirable that the M. should submit an explanation in support of his order in accordance with R 84, Part I, Chap XIII of the High Court's General Rules and Circular Order (criminal). 1935 Pat 316 35 Cr. L. J. 1020 1934 Cr C 737.

S 489 Alteration in allowance

——on change of circumstances of the husband an order for maintenance cannot be cancelled, it can only be altered. 1933 Lah 1026.

——where a person in whose favour an order for maintenance has been made happens to be a minor or becomes lunatic, an application for reduction of maintenance under s 489 may be made, the minor or lunatic being represented by his or her guardian or manager, as the case may be. 1937 Bom 454.

——where subsequent to an order under s 488 by the H. C. a decree for restitution of conjugal rights has been passed by a competent civil Court, the effect of such decree must be considered by the M. under s 489 (2) 1934 Rang. 39 · 35 Cr L. J. 813 . 1934 Cr C, 262, 3 Rang. 150 *Ref.*

——the M cancelled his previous order for maintenance upon the husband informing the M that he had obtained a decree for restitution

S 489 Alteration in allowance—*contd.*

of conjugal rights while he concealed the fact of appeal against that decree The decree being set aside in appeal the M restored the original order for maintenance, held, that in the face of the express provisions of ss 488 and 489 applicable to the case, s 369 was not applicable to the case The M had power under s 482 (2) to alter or vary his order Held also, that the order obtained by fraud on the Court was a nullity 1937 Cal 334.

——an order reducing the rate of maintenance for the months of which arrears were claimed restrospectively is improper specially where there had been no application by the husband for reduction of maintenance The wife securing a job of Rs 6 in a school was no ground for the reduction of the maintenance of her two children from Rs 25 to Rs 20 per month 1935 Lah 24 1935 Cr C 18

——where the husband applied for reduction of the rate and the parties agreed to refer the matter to arbitration and the arbitrator being unable to secure the attendance of the husband gave his award *ex parte* the arbitrator was *functus officio* and was not competent to review his own award 1934 All 940 1934 Cr C 1248

——before the original order can be altered, it must be shown that there has been, if not a change in the circumstances of the husband, a change in the circumstances of the wife The mere fact that the wife is living in a different manner does not necessarily constitute a change and the husband s keeping a mistress and getting children by her and contracting debts for litigation are not circumstances for reducing the allowance 1938 Rang 42

S 490 Enforcement of order of maintenance

——the provision of sec 490 are merely supplementary to s 488 sub sec (3) which allows the M who passed the order of maintenance to enforce it It cannot therefore be concluded that the order could only be enforced in the district in which the person ordered to pay lives 1935 Rang 407 1935 Cr C 1192

S 491 Power to issue directions of the nature of habeas corpus

——the rules of common law which govern the procedure of a writ of *habeas corpus* cannot necessarily or by implication be considered applicable to the exercise of the statutory power conferred upon the H C under s 481 and the rule permitting successive [illegible] applications is neither reasonable nor desirable in this country [illegible] fore, [illegible] by a [illegible] 271 [illegible]

and the sec is not *ultra vires* on that account [illegible] C 193[illegible] 135 38 C W. N 299 1934 Cal 259, 54 Cal 727 [illegible]

S 491. Power to issue directions of the nature of habeas corpus—*contd*

——a person who has been convicted and imprisoned lawfully by a Court which has not misused its powers and has jurisdiction in the matter, cannot be said to be "illegally or inproperly" detained. 1936 Nag 132 1936 Cr C 663

——the word "improperly" does not include any consideration of the question whether a particular legislation is proper It only refers to cases in which though the forms of law have been observed there has been a fraud on an Act or an abuse of the powers given by the legislature 36 C. W N 1088 1932 Cal 753 1932 Cr C. 796

——unless all the three conditions of sec 7 of the Extradition Act are fulfilled, the issue of a warant by the Political Agent is unauthorised and the arrest in pursuance of such warrant is illegal In such a case the H C can interfere and quash the proceedings under s 491 Cr. P. C 1935 said 244 1935 Cr C 1307

——an arrest without warrant under s 10 of the Extradition Act is illegal and the person arrested and detained must be released on an application made by him under s 491 Cr. P. C 62 C. 399 39 C W N 285 36 Cr L J 794 1935 Cal. 122

——temporary release of prisoner from jail in order to enable him to be at the side of his ailing wife does not amount to a remission of the unexpired portion of the sentence so as to make his subsequent re-arrest and detention illegal 1935 All 181 36 Cr L J 325 1935 Cr. C 226.

——the H C can set at liberty a person arrested under illegal extradition warrant The mere fact that after his arrest he was temporarily released on bail pending further inquiry does not out the jurisdiction of the H C. under s 491 56 A 409 1934 All 148 35 Cr. L J 1296

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Court which was only a general power ought not to be exercised 1934 H C A L J 946 1935 All 53 36 Cr L J 554

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S 491. Power to issue directions of the nature of habeas corpus—*contd*

——when the rights of legally constituted guardian of a minor come [illegible]

[illegible]

——where restrictions were imposed on the applicant to see his relations and friends, that did constitute a curtailment of liberty but did not constitute a detention in custody The words ' detained in custody ' *imply some sort of confinement* or physical restraint on the liberty of movement of the detenue and so long there was no such restriction, the application under sec 491 was incompetent 1934 Oudh 301 35 Cr L J 1052 1934 Cr C 839

S 494 Effect of withdrawal from prosecution.

[illegible]

the object of withdrawal is to avail of the evidence of a particular [illegible]

[illegible]

the divergent views in 39 C W. N 1082 36 Cr L. J 1248 1935 Cal 473 and 56 C 1023 33 C W N 468 1929 Cal 319 which was followed in 1933 Cal 148 34 Cr L J 675 1933 Cr C. 225 But see the Bombay H C case in 59 B 355 1935 Bom 180 36 Cr L J 937

[illegible]

in those proceedings *Above F B case*

——a withdrawal by the Public Prosecutor is a withdrawal from the prosecution of any person for any act or omission made punishable by any law Where he, in opening the case, says that he wants prosecute the accused under certain sections only and that there case under certain other sections, he only gives his opinion that

S 494 Effect of withdrawal from prosecution—*contd.*

evidence produced for the prosecution would not show a case under that section and there is no withdrawal by him 1935 All 366 36 Cr. L. J. 1103 1935 Cr C. 384

——from the mere fact that the police have applied under s 494 for withdrawal, the M is not bound to allow the case to be withdrawn His consent is not immaterial and he must exercise discretion in the matter 1938 Nag 76

——there is nothing to debar the injured person from filing a complaint against the accused merely because the Crown has chosen to withdraw the case, and the Courts are legally entitled to ignore the orders of discharge passed on the withdrawal of the complaint if they are satisfied that the case is otherwise a fit one to be proceeded with 1934 Lah 169 1934 Cr C 347

——cls (a) and (b) do not necessarily indicate two distinct classes of cases from the point of view of their being triable by the Court of Sessions or by a Magistrate The two clauses together exhaust the whole range of cases conceivable 36 C. W N 928 55 C L J 79 1932 Cal 699 1932 Cr C 634

——a mere concurrence of opinion between the Judge and the P [illegible]

[illegible] discretion of the Court 1932 Sind 92 1932 Cr C 532 I R 1932 Sind 74 137 I C 344 33 Cr L J 449

——it is not necessary to record any reasons for permission to withdraw 1932 Lah 368 1932 Cr. C. 486 136 I. C 714 33 Cr L. J 337 I R 1932 Lah 250 2 Pat. 708 *fol*, 1938 Nag 76, 1929 Cal 319 Rel. on

[illegible] 54 M 598 · 60 M L. J 520 1931 M W. N 368 1931 Cr. C. 1026 32 Cr L. J. 699

S 495 Permission to conduct prosecution

——before a private individual can conduct the Crown case it is necessary for him to obtain permission of the Court under cl (1) and though that clause empowers a trying M to permit "any person" to conduct the prosecution, he should not grant such permission indiscriminately. In a murder case it is for the M, and not for a private

S. 495. Permission to conduct prosecution—*contd.*

individual to see that the Crown case is property conducted 1933 Sind

345 1933 Cr C 1121

Dt M was not proper and the original permission should stand 1935 Sind 3 36 Cr L J 1046 1935 Cr C 44

——Excise officers are not included in the expression ' officer of police ' in sec 495 (4) 1933 Bom 234 34 Cr L J 905 1933 Cr. C 657.

S 496 In what cases bail to be taken

be given an opportu uty to arrange for the defence and for funds, is not sufficient reason where the release o bail will lead to tampering with the witnesses for the prosecution. 1933 All 895 1933 Cr C 1525

——bail will not be withheld merely as punishment But in granting bail the Court should consider (1) the nature of the accusation, (2) the nature of the evidence, (3) the severity of the punishment, (4) whether accused, if released on bail is likely to (a) tamper with prosecution evidence, or (b) get up false evidence in support of defence 1933 Sind 367 1933 Cr C 1339

——where a person accused of a bailable offence has been released on bail granted by the police and the offence subsequently developed into a non bailable offence punishable with transportation for life the M has power to cancelthe bailbond 1936 Sind 187 1936 Cr C 972, 30 S L R 131

——ss 107 and 496 read together show that person against whom proceedings are taken under s 107 are entitled to bail as of right Measures to be taken to prevent breach of the peace discussed 1933 Rang 164 34 Cr L J 950 1933 Rang 165 34 Cr L J 1195

——where an accused is rightfully entitled to be on bail his bail cannot be cancelled except in due course of law 1932 All 327 33 Cr. L. J 752 1932 Cr C 306 139 I C 330 I R 1932 All 554.

S 497 When bail may be taken in case of non bailable offence

——save in exceptional cases persons accused of serious crimes should not be released on bail The richer the accused and the more easy it is for him to find bail, the less it is desirable that he should be released and in no circumstances whatever, without an order of H C 1932 Pat 209 1932 Cr. C 522 11 Pat. 280 33 Cr L J 574.

——the words "by itself" mean by the M himself who commits the man to custody, it does not include any other M. of the same class 1933 Sind 331 1933 Cr C 1078

[illegible]

it is a genuine case and there is good *prima facie* evidence 1933 Bom. 492 1933 Cr C. 1596

——s 498 gives a much wider discretion to grant bail to the Court of Sessions and the H C than that given to Subordinate Courts by s 497, and s 498 is not controlled by limitations of sec 497. 1933 Lah 925 1933 Cr C. 1384, 1033 Bom 492 1933 Cr C 1596

——where it is certain that the trial should necessarily be protracted, the case being a complicated one, that is a circumstance to be taken into account in favour of granting bail The Court need not be as strict in a case under s 409 I P C as it should be if the offence were one of murder 1933 Bom 492 1933 Cr C 1596 An accused person shall not be released on bail if there appear reasonable grounds for believing that he has been guilty of an offence of murder. 1934 Lah 609 1934 Cr. C 941

——the M has no power to commit to custody the accused who had been released by the police on bail 1933 Sind 331 1933 Cr C 1078

——where a bail granted by the Sessions Judge is cancelled by the H C. unless a new case for granting bail is made out, the Sessions Court cannot grant bail. 1933 All 895 1933 Cr. C. 1525.

[illegible]

1937 Rang 474.

[illegible]

S 497 When bail may be taken in case of non bailable offence—*contd*

——the object of sec 497 (5) is not punitive but it is equally true that the interests of the administration of justice demand that nobody should be allowed to impede the course of justice or hamper its administration in any manner 1936 Lah 730 37 Cr L J 937 1936 Cr C 765

S 498 Power to direct admission to bail or reduction of bail

finality Once however leave is granted and seisin taken by the Privy Council then section 498 expressly empowers the H C to act in the matter not on its own motion but on behalf of their Lordships The inherent power of a Court under sec 561 A Cr P C cannot be invoked with respect to any matter which is expressly dealt with by the Code 1937 Nag 181 38 Cr L J 384

498 Cr P C But the H C circumstances nd 131 1934 Cr C 1067

as the discretion of the Magistrate under sec 497 (1) except that it will not usually grant bail unless there are special grounds 1933 Bom 491 1933 Cr C 1596

S 499 Bond of accused and sureties

——sec 499 is exhaustive of the conditions which can be imposed on sureties Where a person executes a suretybond undertaking to produce the accused in a particular Court there is no undertaking by him to produce him in any other Court 1936 Nag 243 1936 Cr C 1037

——if a surety executes a bond for the appearance of the accused he becomes amenable to the penalties in the event of his failure to produce the accused even though the accused himself does not execute a bond 1934 All 1046 1934 Cr C 1329

——bail proceedings are special proceedings about which there specific provisions in the Code and they must be strictly followed Cl states that the time and place at which the accused is to appear be mentioned in the bond and cl (2) says that if the accused is

S 499 Bond of accused and sureties—*contd.*

appear in some other Court, the bond must expressly say so 1936 Nag 243 1936 Cr C. 1037.

——*the Magistrate is bound to accept the sureties produced,* provided they are properly identified and are solvent and reliable He cannot, for instance, reject them on the ground of their political views The sureties must appear before him and satisfy him of their solvency and identity The M cannot refer the question of their solvency and identity to some other M or allow the sureties to execute the bond in the presence of any other M than himself 38 Cr L J 633 (Nag)

S 500 Discharge from custody

——accused handed over to Mahila Ashram on bailbond being furnished—accused is not released and surety is not responsible under the bond 1938 Oudh 81

S 502 Discharge of sureties

——where the surety for the appearance of the accused subsequently applies for concellation of the bail bond, it is not right that he should be called upon to forfeit the bond and pay the amount of the bond or any part thereof The proper procedure would be to issue a warrant for the arrest of the person for whom he stood surety 1937 Rang. 244 38 Cr L J 1010, 95 I C 678 *Rel on*

S 503 When attendance of witness may be dispensed with

——all the witnesses should be examined in open Court, giving the accused an opportunity to examine them and commission ought to be issued only under the circumstances stated in ss 503 and 506 1932 Pat 242 1932 Cr C 639 33 Cr L J 942

——it is always better that the complainant attends in person rather than that he should be examined on commission But where a complainant has appeared [illegible]
attend further as he is [illegible]
excitement prayer for iss[illegible]
Rang 231 38 Cr L J 875

——witnesses should ordinarily be examined in the Court precincts and the M should himself see the witnesses So where an application is made for examining lady witnesses on commission the Court should see whether it would meet the needs of the case if the ladies are [illegible] of the Court

[illegible] issue process
[illegible] lso a writ of
[illegible] C 311

——a Dt. M has no jurisdiction to issue commission to examine a witness in Burma, since Burma has ceased to be part of British India. 1937 M W N. 1132 1938 Mad 192.

S 510 Report of chemical examiner—*contd*

what are the medico legal inferences to be drawn from the report 1933 All 837 1933 Cr C 1463

——no hard and fast rule can be laid down as regards the value to be attached to reports of Chemical Examiners but a meagre and cryptic report is hardly of any value 1934 Oudh 62 35 Cr L J 700 1934 Cr C 231

[illegible]

Cr C 231

——the Court cannot refuse to attach any weight to the reports of chemical examiner even though he is not examined They should have the same value as they would have if they were formally proved by sworn testimony It is always open to the Courts to call the chemical examiner when it is deemed necessary 1934 Lah 150 1934 Cr C 330 1934 All 873 1934 Cr C 1082

——the provisions relating to the production of a report by the chemical examiner in place of the chemical examiner s own personal appearance in Court are spec al provisions and must be strictly adhered to Paper in somebody s handwriting on which it is written that the chem cal examiner s report shows that certain packets conta n cocain is not legal evidence and cannot be a substitute for chemical examiner s certificate 1938 Lah 496

S 511 Previous conviction or acquittal how proved

——in order to prove the previous convictions for the purposes of sec 75 I P C the provisions of sec 511 should be observed 35 Cr L J 1387

——in order to support a charge of a prev ous conviction there should be on the record a copy of some judgment or extract from a judgment or some other documentary evidence of the fact of such previous conviction 1934 Lah 693 35 P L R 697

S 512 Record of evidence in the absence of accused

——statements of w tnesses recorded under sec 164 and 512 are not inadmissible merely because the Magistrates who recorded those statements are not examined 16 Pat L T 730 1936 Pat 11 37 Cr L J 235

——the deposition of a witness examined at the trial of an accused cannot subsequently be used at the trial of an absconding accused if the procedure laid down in sec 512 is not observed Procedure to be followed stated 1938 Pat 49, (10 C 1097, 1926 All 340) *Ref*

S 512. Record of evidence in the absence of accused —*contd*

——under cl (1) the M has to inquire whether the accused person has absconded and there is no immediate prospect of arresting him This preliminary e [illegible] tion to record the d [illegible] any one or for any [illegible] fact to the prejudic [illegible] Cr. I. J 358.

S 513. Deposit instead of recognizance

[illegible] l that [illegible] The [illegible] date [illegible] cused arrested in case the accused attempts to abscond The surety must have a personal stake in seeing that the accu ed carries out the obligation 1935 Pat 195 36 Cr L J 730 1935 Cr C. 534

——where the accused absconded and the surety amount was realised from the property of the accused held that the recovery from the accused of the amount forfeited by him under his bond did not relieve the surety of his liability to make good such part of his bond as *he has been ordered by the appellate Court to pay 1933 Sind 320* 1933 Cr C 1074.

S 514 Procedure on forfeiture of bond

——it is necessary that a person should not stand surety unless he is in a position to produce the accused in Court 1933 Lah 42 34 Cr L J 1158

——where a person denies the execution of a bail bond and the M [illegible]

——a surety bond was executed undertaking to produce the accused on a particular day and on subsequent days until the disposal of the case in Court S Subsequently it transpired that the Court S had no jurisdiction and the case was transferred to Court D which called on the surety to produce the accused The surety having failed to produce, the bail bond was sent to Court S which called on the surety to produce the accused but he failed to do it ; held that there was a forfeiture of the bond as the case cannot be considered as having been disposed of so far as Court S was concerned by reason of the transfer 1934 Cal 785 38 C W N 852 1934 Cr C 1207

——a surety who undertakes to produce the accused on particular dates and at a particular place cannot order to produce the accused, a differrent place or on a differrent date Failure to do so does a forfeiture 38 C W N 804 1934 Cal 763 1934 Cr. C 1188.

S 514. Procedure on forfeiture of bond—*contd.*

——there is no breach of the conditions of the bail bond if the surety has failed to produce the accused in one Court and the case is [illegible]

[illegible]

they appeared and put in a compromise and went away No order was passed on the compromise Eventually the compromise was accepted, held the sureties were not bound for the production of the accused on the date not fixed by the Court 1934 Lah 294 1934 Cr C. 525

[illegible] strictly [illegible] and not [illegible] was not [illegible] subse- [illegible] Cr. L J. [illegible]

——the surety's liability does not terminate if the production of the accused becomes impossible owing to his having escaped from custody after arrest 1931 Pat 19 1931 Cr C 55 I R 1931 Pat. 145 130 I C. 161 32 Cr L J 467.

——where the accused had subsequently been arrested and the surety was unable to pay the forfeited amount which was excessive, the H C reduced the amount from Rs. 2000 to Rs 500. 1933 Lah 42 34 Cr. L J 1158 1933 Cr C 121

——the amount of bond for appearance is not really a fine but penalty incurred by way of forfeiture under s 514. 1938 Cal. 256

——the accused executed a bond for appearance before a certain Court On a certain date of hearing the Court sat at a place different from its usual place of sitting The accused did not appear on such date and the bond was forfeited It appeared that the bond was not signed by the accused and the order sheet did not show that the accused had knowledge of the change of venue of the Court; held, that the bond could not be forfeited under such circumstances 1938 Cal 155

——when a Court orders forfeiture under s 514, it should in the first instance proceed to recover the amount by issuing a warrant for the attachment and sale of the moveable property belonging to the [illegible]

and the amount forfeited is excessive and the surety is unable to pay. 1935 Cal. 246 1935 Cr. C 319.

S 515. Appeal from and revision of orders under s 514

——where no appeal is admitted a revision of an order passed under s 514 can be entertained by the Dt M himself and for such revision the case need not be sent to H C 1934 Sind 152 1934 Cr C 1144

S 516 Power to direct levy of amount due on certain recognizances

——neither ss 516 and 517 nor any other provisions of the Code authorise the Court to make an order on the accused not to ask the bank to repay the money lent by him to the bank, specially when there is nothing to show that the money in the bank is part of the proceeds of the offence of cheating or criminal breach of trust alleged 40 C W N. 96 37 Cr L J 935

S 517 Order for disposal of property regarding which offence committed

——it cannot be laid down generally that if no offence is proved

C W N 862

——s 517 does not apply when the property is neither in the custody of the Court nor produced before it nor when the accused have not committed any offence in respect of the property 1935 A. M L J 120, *contra* The sec refers not only to property in respect of which offence has been committed 1937 Sind 33 38 Cr L J 382

——in order to apply sec 517 there must have been 'an inquiry or trial in any criminal Court and such inquiry or trial must have been concluded Where therefore the Police seized property under s 550 Cr P C and subsequently acted under s 169 the case would come under s 523 and not under sec 517 as the case did not proceed to a trial and did not reach the stage of an enquiry either 41 C W N 1376

——where bangles which were given for use were misappropriated and pledged and the accused were convicted, held that the bangles should be returned to the owner The pledgee could not retain them as the owner had been deprived of them by a criminal offence 1935 Rang 205 36 Cr L J 1106 1935 Cr C 682

——where the property concerned is ornaments, and they have been sold, Court can order payment of equivalent value 1935 Pesh 98 36 Cr L J 1237 (1927 Rang 332, 1934 Cal 454) *Ref*

——the mica found in excess of the amount entered in the account book and seized by the Inspector cannot be confiscated under sec 517 Cr P. C, in the absence of proof that the mica was obtained by illicit

S 514 Procedure on forfeiture of bond—*contd*

——there is no breach of the conditions of the bail bond if the surety has failed to produce the accused in one Court and the case is transferred to another 37 C W N 880

——if a surety executes a bond for the appearance of the accused he beco
his f
not e

direc
they appeared and put in a compromise and went away No order was passed on the compromise Eventually the compromise was accepted, held the sureties were not bound for the production of the accused on the date not fixed by the Court 1934 Lah 294 1934 Cr C 525

——a bond imposing a penalty should always be construed strictly
and not
was not
subse-
Cr L J

on of the accused becomes impossible owing to his having escaped from custody after arrest 1931 Pat 19 1931 Cr C 55 I R 1931 Pat 145 130 I C 161 32 Cr L J 467

——where the accused had subsequently been arrested and the surety was unable to pay the forfeited amount which was excessive, the H C reduced the amount from Rs 2000 to Rs 500 1933 Lah 42 34 Cr L J 1158 1933 Cr C 121

——the amount of bond for appearance is not really a fine but penalty incurred by way of forfeiture under s 514 1938 Cal 256

——the accused executed a bond for appearance before a certain
nt
ich
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ed
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bond could not be forfeited under such circumstances 1938 Cal 255

——when a Court orders forfeiture under s 514 it should in the first instance proceed to recover the amount by issuing a warrant for the attachment and sale of the moveable property belonging to the
for impri-

portion
in part
only It can do so where the accused has been subsequently arrested and the amount forfeited is excessive and the surety is unable to pay. 1935 Cal 246 1935 Cr C 319

S. 515. Appeal from and revision of orders under s 514

——where no appeal is admitted a revision of an order passed under s 514 can be entertained by the Dt M himself and for such revision the case need not be sent to H C 1934 Sind 152 1934 Cr C 1144

S 516 Power to direct levy of amount due on certain recognizances

——neither ss 516 and 517 nor any other provisions of the Code authorise the Court to make an order on the accused not to ask the bank to repay the money lent by him to the bank, specially when there is nothing to show that the money in the bank is part of the proceeds of the offence of cheating or criminal breach of trust alleged 40 C W N 96 37 Cr L J 935

S 517 Order for disposal of property regarding which offence committed

——it cannot be laid down generally that if no offence is proved [illegible]

[illegible] appellate or revisional Court under s 520 has a discretion and can properly direct that the property should remain in the custody of the trial Court, subject to and pending decision of civil Court 40 C W N 862

——s 517 does not apply when the property is neither in the custody of the Court nor produced before it nor when the accused have not committed any offence in respect of the property 1935 A M L J 120, *contra* The sec refers not only to property in respect of which offence has been committed 1937 Sind 33 38 Cr L J 382

——in order to apply sec 517 there must have been "an inquiry or trial in any criminal Court" and such inquiry or trial must have been concluded Where therefore, the Police seized property under s 550 Cr P C and subsequently acted under s 169 the case would come under s 523 and not under sec 517 as the case did not proceed to a trial and did not reach the stage of an enquiry either 41 C W N 1376

——w [illegible]
and pledge [illegible]
should be [illegible]
the owner [illegible]
205 36 Cr L J 1106 1935 Cr C 682

——where the property concerned is ornaments, and they have been sold, Court can order payment of equivalent value 1935 Pesh 98 36 Cr L J 1237 (1927 Rang 332, 1934 Cal 454) *Ref*

——the mica found in excess of the amount entered in the book and seized by the Inspector, cannot be confiscated under sec. Cr P. C, in the absence of proof that the mica was obtained by

S 517 Order for disposal of property regarding which offence committed—*contd.*

means and in the absence of a charge of illicit obtaining of the same. 1937 Pat 257 38 Cr. L. J 602

——where A and B not beeing mercantile agents within the meaning of sec 2 (9) of the Sale of Goods Act, deposited ornaments with C who received them not in good faith, and all of them were accused of criminal breach of trust but C was acquitted, he was not protected under sec 178 Contract Act and hence was not entitled to possession under sec 517 Cr P C 1937 Sind 33 38 Cr. L J 382.

——the important condition for the making of an order under s 517 is that there must have been "an inquiry or trial in any criminal Court and that such inquiry or trial must have been concluded" If however, by reason of a disputed claim an order for delivery cannot be made or the property cannot be finally disposed of, the Court should leave the parties to their remedy in the Civil Court In such a case however it will be open to the Court to deal with the matter under s 523 But whether the case be under s 517 or s 523, in no circumstances can an order be [illegible]
custody of one of the [illegible]
for this might mean [illegible]
brought 1938 Cal 17 [illegible]
Lah 76 *Expl* and *dist*

——when accused is acquitted, property seized from him cannot be confiscated merely on the ground of suspicion without proving that it does not belong to him. 1938 Nag 52, (1927 Cal. 532, 22 B 844) *Rel on*

——return of property to owner or pledgee or buyer—if the pledge or sale is good the property should be returned to the pledgee or buyer as the case may be 1937 Rang 385

——where the complainant pledged certain jewels for Rs 125 with the accused who in turn pledged them with a third person and the accused having denied the pledge was convicted under s 406 I P. C the accused cannot be ordered to restore the jewels to the complainant unconditionally The complainant should be ordered to pay Rs 125 with interest to the third person before obtaining possession of the jewels. 1932 M W N 1270

——where the necklace was obtained for inspection by the accused and wrongfully pledged and the accused was absconding, the Court was not competent to order regarding the disposal of jewel 1932 M. W N 1345

—— [illegible]
under [illegible]
Court [illegible]
pawnee [illegible]

——where accused were convicted under s 121-A for carrying out the policy of the Communist International by writing articles on "Russia

S 517 Order for disposal of property regarding which offence committed—*contd*

and India" and "The power of Labour", the books dealing with Russia which supplied materials for the articles could not be returned 1934 All 207 35 Cr L J 1389

——money was found with accused and taken possession of by the police accused was convicted and fined and the fine was directed to be recovered from the sum in Court, but there was no finding that the sum was stolen property, held that the order was not an order for disposal of money by delivery to a person claiming to be entitled to possession, but the order can, however, be justified under the power of the Court under sec 517 to confiscate money in Court 1934 Bom 193 35 Cr L J 1344 1934 Cr C 707

——this sec is wide enough to cover the case of currency notes provided at a trial for the offence of criminal misappropriation 1932 Lah 621.

——except in exceptional cases the simple rule should be that if no crime is made out the M should return the property to the party from whom it was taken 1932 Mad 495 33 Cr L J 783

——an order directing the keys of a house to be made over to the complainant is in fact an order directing that possession of the house be given to him and sec 517 is rendered applicable 1931 Lah 527 32 Cr L J 847 1931 Cr C 751

——an order under this sec regarding stolen property should not be made without serving or hearing the other side 33 Cr L J 369.

——where a party has been ordered to restore certain property to another but such party has already converted the property to his own use, the Court has power to order the production of such property as may be capable of production and the production of the money-equivalent of such property as may be incapable of production 1934 Cal 454 35 Cr L J 886 1934 Cr C 020, 48 C 522 *Rel on*

——when property is seized from a person who is afterwards acquitted of stealing it, the property should ordinarily be returned to that person 1933 Mad 434 56 M 654 34 Cr L J 586

——the sale proceeds of stolen property is itself property to which s 518 relates and may therefore be made over to the person claiming it So long as there is any one entitled to the possession thereof the Govt cannot lay any claim to it 34 Cr L J 581

——in essence the object of ss 517 and 523 is to provide a summary method of restoring the *status quo* 19 N L J 264

——an appeal lies to the H C under s 520 against an order passed by an Asst Sessions Judge under s 517 confiscating to Govt the money found on the person of the accused who is convicted of a dacoity 41 C W N 512 65 C L J 397

——s 517 gives the M a very wide discretion regarding the return of property, so unless the M has exercised a wrong judicial principle the H. C will not interfere in revision 1937 Mad 313 38 Cr L J 690.

S 520 Stay of order under sec. 517, 518 or 519.

——the Court of revision must be a Court of revision as contemplated by Chap XXXII of the Code. It is difficult to hold that Sessions Judge or Additional Sessions Judge is a Court of revision within the meaning of sec. 520. 62 C 86, 57 A 156 **P C** *Rel. on*, 56 B 369 *Doubted.*

—— [illegible] st be a Court of appeal a [illegible] is nothing in the terms of [illegible] Court of appeal" in that sec. [illegible] rties has appealed or could [illegible] of appeal within s 520 62

——the words ' Court of appeal" are not limited to a Court before which an appeal from an order of acquittal or conviction, as the case may be, could lie or in which such an appeal is or might be pending The jurisdiction of the Court of appeal to deal with an order for disposal of property is not dependant on the question in what Court an appeal from the acquittal or conviction might be brought Where an order is passed by a M for disposal of property, the accused having been acquitted, the S J, as a Court of appeal *i e*, as the Court to which appeal ordinarily lies, from the M's Court, has jurisdiction under s 520 to entertain and hear and dispose of an appeal from the order for disposal although there can be no appeal to him from the order of acquittal 40 C W. N 287 1936 Cal 21 37 Cr L J 313 1936 Cr C 112

——where a Dy M makes an order for disposal of property, the Additional S J has jurisdiction to revise that order, although such order may have been passed in a case in which the accused is acquitted 40 C W N 862

——s 520 gives the Sessions Court power to modify, alter or annul an order passed under s 517 by a subordinate M 1938 Rang 143

——s 520 means that any Court which has powers of appeal, confirmation, reference or revision in respect of the trial Court, can try any substantive offence in respect of property dealt with by the trial Court under s 517, 518 or 519 56 B 369 1930 Cr. C 789 33 Cr. L J 807 34 Bom L R. 1203 I R 1932 Bom 499 139 I. C 433 **F B**, 42 B 564 *overruled* 7 Rang. 345 **F. B** *fol*

——in order that a Dt M. should have jurisdiction to dispose of property under s 520 it is not necessary that he should find that an offence appears to have been committed in respect of that property. 1937 Pat 591 38 Cr L J 1091

——the owner must, if he desires the M. to treat as owner any one other than the person who was in possession, prove that it is his. But the M has no jurisdiction to pass an order for sale of the property and for retention of the sale proceeds in deposit in Court pending a decision of civil Court as to the ownership 1937 Pat 591 38 Cr L. J 1091

S 522. Power to restore possession of immovable property

——for passing of an order under s 522 it must be shown that the owner or occupier of land was dispossessed by reason of force shown to him or her 1937 Rang 248 38 Cr L J 918, where there is no use of criminal force as defined in s 350 I P C an order under s 522 directing that persons dispossessed be restored to possession, is made without jurisdiction 1935 Lah 477 36 Cr L J 1161 1935 Cr C 871

——where the appellate Court acquits the accused of the offence under sec 352 I P C and maintains his conviction under sec 447 I P C, there is no flaw in an order under s 522 Cr P C The mere fact that the accused is acquitted of assault and convicted only under s 447 I P C does not mean that no criminal force or show of criminal force or criminal intimidation was present in the conduct of the accused 1934 All 1025 1934 Cr C 1335

——where in a case of disputed succession the accused broke open the lock and took forcible possession of a house and refused to return possession to the party already in possession, an order restoring the *status quo* could not be passed under s 522 1934 Lah 454 1934 Cr C 702

or show of
d not apply.
Oudh 199

the order of
no conduct
– conferred by the
624 1932 Cr C.
254
order under s 522
within one month
trying M but also
r L J. 1158, 1933

Pat 617 34 Cr L J 940

S 523 Procedure upon seizure of property taken under s 51 or stolen

——where it appears that the police have seized property from a person who is not shown to have committed any offence in relation to

possession the property is found to retain it as against the rightful ow and force the latter to a civil suit for its recovery if the a absconds 1937 Rang 450

——a proceeding under s 512 (1) is neither an enquiry nor and the M has no authority to arrive at conclusions regard

S 523 Procedure upon seizure of property taken under s 51 or stolen—*contd*

which are in dispute between the contending parties in order to decide which of the parties is the person entitled to the possession of the
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ontend ng
2 38 Cr
ade by a
disposal
and not
under the provision of sec 517 and therefore no appeal lies aga nst such an order 1937 Rang 42 38 Cr L J 358

——an order for custody and production of property can be made only if the person entitled to possession cannot be ascertained, and the M is bound to make an inquiry touchi g the right to possession If on the materials placed before the Court it cannot be definitely said that the property belongs to one party the Court cannot order it to be detained till the parties settle their disputes in a c v l Court In such a case, it is his duty to proceed under s 523 (2) and then under s 524 It would be qu te open to the parties to go to the civil Court if they so desire, and if any decree is passed criminal proceeding would at once cease 41 C W N 1376 1938 Cal 17 17 B 748 *Rel on* 1924 Lah 76 *Expld and dist*

——s 523 (1) is wide enough to cover an order of confiscation of property, and there is nothing to prevent a M from an order of for feiture of property to Govt 1936 Nag 266 1936 Cr C 1139

——in his capacity of Presidency Magistrate the Commissioner of pol ce can exercise the power under s 523 Cr P C in the absence of any Government order that he shall not exercise such a power 1932 Mad 428 1932 Cr C 409 1932 M W N 116 33 Cr L J 539 138 I C 126 I R 1932 Mad 510

——s 523 will equally apply where there has been and there has not been an inquiry or trial or where the property has been or has not been produced, in Court In other words, even in a case which comes under s 517 if on the facts the Court finds itself unable to make an order for the disposal of the property in the manner ind cated therein, it will be open to it to deal with the matter under s 523 41 C W N 1376 1938 Cal 17

S 526 High Court may transfer case or itself try it

Sub sec (1) Grounds for transfer

——before the H C would take into considerat on an apprehen sion raised in the mind of the accused that he would not get a fa r trial it must be satisfied that the apprehension is not a fanciful one 1936 Rang 114 37 Cr L J 436

——a remark by the M that he will finish the case w thin six weeks is no ground for transfer where it is not suggested that the M is

S. 526. Sub-sec. (1) Grounds for transfer—*contd.*

prejudiced in any way about the merits of the case. 1936 All. 695 37 Cr. L J. 1100.

——where the accused was prosecuted on the report of the Dt M. it was proper for the ends of justice to transfer the case to a M who was not immediate subordinate to the Dt. M. 1937 Rang 284 38 Cr. L. J. 923.

——a M. has no power to order the accused to pay the subsistence [illegible] and such order is in itself [illegible] the mind of the accused [illegible] trial. 1937 Rang. 311 . 38 [illegible]

——s 526 does not say that a transfer may be ordered in any case where it is made to appear to the *accused* that a fair and impartial inquiry or trial cannot be had, but says so where this is made to appear to the H. C Therefore the H C. itself should be satisfied on that point. 1936 Sind 237 1936 Cr C. 1093

——where the accused honestly entertain an apprehension the case should be transferred specially when the trial was not yet commenced, as no administrative inconvenience would be caused thereby But the accused cannot be permitted to choose his own Court. 1933 Pat. 597 : 34 Cr L J 1025.

——what the Court has to consider is not merely the question whether there has been any real bias in the mind of the presiding Judge against the applicant, but also the further question whether incidents may not have happened which, though they may be susceptible of [illegible] 1937 Cal 64 38 Cr L J 344

[illegible]

541 1934 Cr C 820

——Courts may pass orders which may either be legal or illegal, but the mere passing of an illegal order will not justify an inference against their honesty or impartiality. 1937 Lah 411 38 Cr. L. J. 955.

——there cannot be an inference of prejudice from the Magistrate's refusal to summon witness residing in a far country. 1937 Rang. 528.

——the fact that the M. is trying or has tried one case against an accused person is no reason why he should not try any subsequent case against the same person, specially when no allegation of prejudice or unfair treatment has been made. 1933 Nag 201 : 34 Cr. L.J. 1035.

S 526. Sub-sec. (1) Grounds for transfer—*contd*

——where two complaints are filed before the M. one by the accused and another against him, the mere dismissal of the accused's [illegible] against him. Interest or [illegible] rmed on the evidence [illegible] 866.

[illegible] the M. discharges the [illegible] er, the accused in the [illegible] pre judged and apply [illegible] 34 Cr. C 704.

[illegible] appeared as a defence witness in another case before the same Magistrate and was examined as such and in the judgment the M remarked that the accused was dealing in illicit sale, held, that that was a ground of transfer. 1935 Rang 446 1935 Cr C 1242.

[illegible]

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the

neitl [illegible]

the counsel had been wasting nearly one hour in useless cross-examination the Magistrate warned him that he would have to end his [illegible] held [illegible] 1933

[illegible] rders to the subordinate Courts relating to their treatment of counsel is no ground for transferring a particular case from his file 1933 All 949 1933 Cr C. 1569

——where the allegation of the accused that the M was under the influence of police was not refuted by the M and his conduct was such as would raise in the mind of the accused apprehension that he cannot get fair and impartial trial, the case must be transferred 1933 Rang 165 34 Cr L J 1195

——private consultation with party to compromise the case may be a ground for transfer 1931 Lah 32 130 I C 430 I. R 1931 Lah 302 · 32 Cr L. J. 537 1931 Cr C. 96

——where it is clear that the trying M has had an interview with one of the parties to the litigation privately and out of Court and has heard from that party his version of facts this fact is sufficient to disqualify the M from subsequently trying the case. 1938 Lah. 346

——a witness who had been examined by the police can reasonably be asked whether a particular version was given by him to the police. The question would be perfectly relevant and legitimate, but the rejection of such question cannot be ground of transfer 1938 Pat 238

——where the M fixed time from 11 30 A. M to 5 P. M and again from 5 30 till 10 P. M. for the hearing of the case although defence lawyers conducting cross-examination were Mahamedans fasting owing

S. 526. Sub-sec. (1) Grounds for transfer—*contd.*

[illegible] to adjourn the case [illegible] unity to engage and [illegible] suddenly fell ill, held [illegible] isfer of the case. 1938 Pat. 238.

——Magistrate's display of unnecessary haste in the trial of a case and his refusal to give the accused opportunity to engage legal [illegible]

——irregularities calculated to prejudice the accused is sufficient ground for transfer, no actual prejudice need be proved. 1933 Lah. 914 34 Cr L J. 900

——where the M. examined the witnesses after 9 P M, contrary to the H. C. Circular, the procedure was very unsatisfactory and the case should be transferred. 1933 Lah 56 34 Cr L. J 383 1933 Cr C. 211.

——where the Dt. M. issued a non bailable warrant in a case of a bailable offence and accused being produced proceeded to frame a revised charge although the case was not posted for hearing on that date, the accused was justified in entertaining an apprehension that the M was angry with him and there was reasonable ground for transfer. 1933 M. W N. 1427

——where a complaint under ss 494 and 498 I. P. C was dismissed and the accused was discharged and a review application by the same complainant was also rejected and a second complaint being made on the same facts an application for the transfer of the case to another M. was made, held, that if the transfer was granted and another M. convicted the accused there would be conflicting orders which ought to be avoided. 1935 All 59 36 Cr. L. J. 128 1935 Cr. C. 38.

——where in a proceeding under s 110 Cr P. C. the M. rejected sureties for appearance without inquiry under s 122 and at the same time reported to the Jail Supt that the applicant was a dangerous person who was thereupon kept in fetters for several days, held, that these circumstances were such as might reasonably cause an apprehension in the mind of the applicant and that the case should be transferred. 1935 All. 517 36 Cr. L. J. 1285.

——the conduct of the police even though unjustified is no ground for transferring the case from the district. 1934 Lah. 516 1934 Cr C. 806.

——where the Dt M. was cited as a witness and he issued a memo. to the sub-Magistrate to consider with reference to sec. 257 Cr. P. C, whether it was not a cause of vexation or annoyance and the latter thereupon cancelled his previous order, the procedure was

S 526 Sub-sec. (1) Grounds for transfer—*contd*

irregular and it was a proper case for transfer 1934 Nag. 39 35 Cr L J 411.

552 cannot cause get justice in the

e from the Court of M merely because ute is of communal

ment is *ourt of* B and involve ust that 49 35 Cr. L J 928

——where the accused a tapedar, was accused of having attempted to bribe his Collector and the M of the district and the M of the district was the complainant, the case should be transferred to another Dt M 1935 Sind 195 36 Cr L J 1480 1935 Cr C 1060

——it is ordinarily desirable that a M who believes that the information that a house has been used as a public gaming house is credible, should not try the case but he cannot be said to be personally interested in the case and s 526 would not apply 1938 Nag 63

——the power of the H C to transfer a case in the *interests of* justice and convenience of the parties is not affected by the Notification of the Lacal Government. 55 Bom 576 1931 Bom 313 32 Cr L J. 1147 1931 Cr C 569 134 I C 347

——a public servant or a Court who makes a complaint under s 195 Cr P. C cannot be allowed to take part in holding the trial, but the consent that is necessary under cl (2) of sec 196 A has to be obtained

be held that he is incompetent to try the case 38 C W N. 581 1934 Cal 391 35 Cr L J 714

——the fact that the M is rather busy does not provide any good ground for the transfer of a case from his Court wherein almost the entire prosecution evidence had been recorded 1936 Lah 827 1936 Cr C 795

——the fact that an accused person and his defence witnesses reside at a considerable distance from where they are being tried is ordinarily no ground for transfer but where it is highly inconvenient and risky the case should be transferred 1935 Sind 68 36 Cr L J 869

S 526 Sub sec (1) Grounds for transfer—*contd*

——where the challan does not disclose that the facts of the case are of any extraordinary complexity or involve any specially difficult questions of law the mere fact that the public interest and some excitement has been aroused is no reason for the transfer of the case 1938 Nag 56

——a [illegible] made an affidavit [illegible] affidavit of [illegible] Further af[illegible] for transfer [illegible]

——a case transferred from the Court of a M on the ground of apprehension of not getting fair trial should not be re transferred to the same M merely on the ground of convenience 1933 Rang 9 1933 Cr C 179

——where the accused was charged under s 408 I P C but he pleaded that the offence was really under s 409 I P C which the M had no jurisdiction to try held that it was no ground for transfer 1933 M W N 1428

——whether an application for transfer of a case pending under s 145 lies under s 526 Cr P C 1934 Lah 73 35 Cr L J 624

——the omission to record reasons for transfer is merely an irregularity and not a ground for interference 1933 Lah 807 34 Cr L J 1174

——a preventive proceeding like one under s 107 Cr P C should not be transferred from one district to another except in extremely exceptional cases 1933 Rang 165 34 Cr L J 1195

——the powers of transfer conferred on the H C are not in any way limited or controlled by sec 269 and the trial for an offence triable by jury may be transferred to a district where it would be held with the aid of assessors only 1935 Sind 145 36 Cr L J 1161

Sub sec (3)

——sub sec (3) is sufficiently wide and comprehensive and a person who has lodged the complaint and moved the machinery of the police and the Criminal Courts continues to be a party interested and he is entitled to move the H C 1934 Lah 612 1934 Cr C 912

——a person making report of an offence to the police is a party interested in the prosecution which may be started by the police within the meaning of cl (3) and (8) and has therefore a *locus standi* to apply for a transfer under the section, but his rights are subordinate to those of the Crown the latter being responsible for the prosecution 1937 All 664 1937 A L J 845

Sub sec (4)

——an application for transfer cannot be entertained if it accompanied by an affidavit the mode of swearing of which provided for in s 539 1936 Lah 356 37 Cr L J 510.

S. 526. Sub-sec. (4)—*contd.*

——every person, whether accused or not, except the Advocate General, who makes an application under the section, must support his application by an affidavit 1933 Nag 201 34 Cr L J 1035, 1922 Lah. 113 *Rel on* 28 All 331 *Expl*

Sub-sec (6)

— es where it feels that the tribunal before uppressed the fact of eld to be absolutely unfounded, transfer should not be granted 1933 Sind 361 1933 Cr. C 1337.

Sub-sec (6-A)

——when untrue and unfounded allegations are made in the m compensation

ide without any reason, but on f causing delay der s 526 (6 A) 1933 Cr. C. 797

——costs were refused as the application was not frivolous or vexatious 1934 Lah 516 1934 Cr C. 806

——in the case of an application under s 526 no order for costs can be made under s 344 56 B 536 · 1932 Bom. 470 33 Cr. L. J. 802, 42 B. 254 *fol*

Sub-sec (8).

— transfer of a case, *Even if the order* is informed that his duty to stay T. 627 sub-sec (8) is a 146 37 Cr L J 1146

——the accused who had remained absent produced medical certificate to support their plea of illness but it was disbelieved by the

covered by the provisions of sub sec (8) 1936 All 851 · 1936 Cr. C.

S 526 Sub-sec. (8)—*contd*

——the amended clause (8) makes it obligatory on the trying M. to grant one adjournment to enable a party to apply to the H. C for transfer Where the M. fails to comply with this mandatory provision the applicant has a just cause to complain and the case must be transferred 1933 Sind 307 34 Cr. L J 1144

——the provisions of sec. 526 (8) are impreative in its terms and where the M does not grant adjournment all the subsequent proceedings are illegal 1931 Bom 411 33 Bom L R 668 1931 Cr C 726

——but it applies only where the complainant or the accused notifies to the Court his intention to move the H C 1930 All 834 32 Cr L J 363

——where an adjournment is granted on condition that the applicant should within reasonable time, apply to the H C for transfer of the [illegible] faith first moves the local [illegible] made for the first time,

[illegible] the accused as a whole

[illegible] (8) is made, the question whether [illegible] upon which the Chief Court might order a transfer is not a question for the trial Judge himself The sec is imperative and not discretionary 1035 Sind 27 36 Cr L J 885

Sub-sec (9)

——unless the case falls strictly without the provisions of sub-sec [illegible]

made an order rejecting that application cannot be supported This would be so inspite of the fact that on more occasions than one it was [illegible] either intended to [illegible] when as a matter [illegible] 936 A W. R 967

S. 528 S J, Chief Pr M, Dt M and Sub-M may withdraw cases from subordinates

——in s 528 there are no words which have the effect of fettering the discretion of the Chief Pr M or other Ms subordinate to them. But the M should have reasons based on principle for adopting that course If the accused persons are prejudiced by the fact that they have no *locus standi* before the issue of process it is not the proper way to counteract that prejudice by ordering the case to be dealt with by a M who happens to have knowledge of matters which the la

S 528 S J, Chief Pr M, Dt M and Sub M may withdraw cases from subordinates—*contd*

prevents persons compla ned against from bring ng to his notice Previous knowledge of the facts is often a disqual fication 58 C L J 214 1934 Cal 137 35 Cr L J 597 1934 Cr C 177

—there is nothing in s 528 which d sables the M from tak ng action unless he is set in motion by the petit on of one of the parties 1933 Sind 205 1933 Cr C 718

—transfer of case by the Dt M requ res notice to the other party 1931 Lah 29 1931 Cr C 93 32 Cr L J 492

Cr L J 1439

—it is incumbent on a M transferring a case from one Court to another on the appl cat on of the Crown to hear the other party and g ve h s reasons for passing the order of transfer 1936 S nd 42 37 Cr L J 545

—a Sessions Judge cannot transfer an appeal from the file of the Add tional Sess ons Judge to his own file 1931 All 435 1931 Cr C 707

—a complaint aga nst the near relatio of the Dt M should not be tra sferred to be tried by a Mag strate subord nate to h m 1936 Rang 242 37 Cr L J 723

—the S J has no authority to revise order of a Dt M passed under s 528 any more than the H C has any such author ty 1935 Rang 446 1935 Cr C 1242

does not amount to any part of the inqu ry 1936 Mad 163 37 Cr L J 223 1936 Cr C 161

—when a Sub divis onal M transfers a case from one Court to another the Dt M can exerc se jurisd ction conferred upon h m by sub-sec. (2) and re transfer the case or transfer it to another Court

S 528 B Failure to plead status a waiver

——the omission to claim the right to be tried as an European

——if the language of the sec is ambiguous a construction

671 1933 Cal 240

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would n
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S 529 Irregularities which do not vitiate proceedings

——a Dt M cannot set aside proceedings before a M on the ground of the latter not being empowered to take cognizance to transfer a case or to take it on his own file and to dispose of it himself 34 Cr L J 923 (Pat)

——the technical insufficiency of a complaint constituted by an incomplete statement of facts is cured by s 529 1932 Bom 610 139 I C 281 I R 1932 Bom 484 33 Cr L J 733 34 Bom L R 901

——if a M not empowered by law to take cognizance of an offence

682

——where a M who is appointed to take charge of the S D O.'s file at head quarters transfers erroneously in good faith a case of which he has not taken cognizance to his own file as second officer the order of transfer is valid by virtue of sec 529 (f) even though he is not empowered under sec 192 on that behalf 1935 Cal 195 42 C W N 246, (36 C 370 869 39 C 1041) *Rel on*

S 530 Irregularities which vitiate proceedings

——if a divisional M not exercising the powers of a Dt. M hears an appeal from an order passed under s 514, his proceedings are vo 1934 Lah 294 1934 Cr C 525.

S. 530. Irregularities which vitiate proceedings—contd

powers and hence he filed an appeal to the Dt. M. who made a

6 Cr L J 287, *fol*

——in a joint trial of three accused if the M has no power to try one accused he being a public servant for whose prosecution sanction is necessary, the whole trial against all the accused is void, as being without jurisdiction 1937 Pesh 52 38 Cr L. J. 1042

S 531 Proceedings in wrong place

——a criminal case was tried by a M and the accused were acquitted. In revision it was held that the M had no territorial jurisdiction to try the case. Held, that having regard to s 531 the

sentence or order of any Criminal Court has been arrived at or passed in a wrong Sessions Divisions, District, Sub-Division or other local are a *ejusdem generis* with a sub-division, provided that in such area the Cr P C. applies 1931 Rang 164 I R 1931 Rang 273 9 Rang. 338 134 I C 209, (8 C 985, 16 C 667) *Rel. on.* 21 W R (Cr) 66 *Ref*

——s 531 is mandatory where it is nobody's case that the wrong assumption of territorial jurisdiction has in fact occasioned a failure of justice nor has the Judge expressed himself to that effect 1931 Oudh 273 1931 Cr. C. 633. 32 Cr. L. J. 828 I R. 1931 Oudh 210

S. 532 When irregular commitments may be validated.

——s 532 does not apply to a case where the prosecution itself is illegal for want of previous sanction In such a case the S J has no power to quash the commitment. The proper procedure is to make a reference to the H. C 1934 All. 963 1934 Cr. C. 1291. 57 All. 412

——in a trial of approver it is not absolutely necessary that the certificate of the Public Prosecutor should be filed in the Court of the committing M. before the inquiry commences. Even if it be held

S 532. When irregular commitments may be validated—*contd*

necessary, the absence of it is not fatal as s 532 empowers a Court of Sessions to accept the commitment, even if irregular, if that Court considers that the accused has not been injured thereby in his defence 1935 Oudh 116 36 Cr. L J 377 1935 Cr. C 206.

——omission to examine the complainant under s 200 Cr P. C. is a mere irregularity which does not vitiate the proceedings, and when there is no suggestion that the accused is prejudiced in any way by the omission to verify the complaint afresh, and no objection is taken before the M after sanction and before the commitment of the committal inquiry, s 532 applies to the case and the S. J. is perfectly justified *in accepting the commitment* 39 *Bom. L. R. 1056*

S 533 Non-compliance with provisions of s 164 or 364

[illegible]

78 35 Cr. L J 823 1933 Lah 311 34 Cr L J 712.

——where the M who recorded the confession did not question the accused as required by s 164 in order to ascertain whether it was being made voluntarily the defect cannot be cured by s 533 The confession cannot be admitted in evidence under s 80 Evi Act but can be proved as an admission under s 21 Evi Act, subject to the provisions of secs 24 to 29 16 Lah 912 1936 Lah 247 37 Cr L. J 432

——where the M has not put the necessary preliminary questions to the accused with a view to satisfy himself that his statement was voluntary, the irregularity can be cured under s 533 provided the omission has not injured the accused in his defence In other words, the Court is enabled under s 533 to take evidence to prove that the confession was 'duly made'' in accordance with ss 164 and 364 If the questions were not put at all the confession is not 'duly made' but it is not necessarily irrelevant The Court may satisfy itself that there was no inducement or threat and so fulfil the requirements of s 24 Evi Act 1934 Cr C 145 1934 All 81 35 Cr L. J 385 **F B**

——a confession which bears neither the signature of the M nor of the accused is one not in strict accordance with s 364 Cr P C But the fact that it had been duly made by the accused can be proved by further evidence under s 533 *Above F B case*

——though the memorandum of confession or statement under s 162 is not recorded in Magistrate s own hand such confession statement will be admissible in evidence and acted upon if the deposes under s 533 1933 Sind 166 34 Cr L J 868 1933 530, 1932 Bom 533 *Dist*

S. 533. Non-compliance with provisions of s. 164 or 364—*contd.*

——failure to question the accused as to whether he is making the confession voluntarily is a material omission which prejudices the accused. The defect is fatal and cannot be cured by s 533 1933 Oudh 315 1933 Cr. C. 698.

S. 535 Effect of omission to prepare charge.

[illegible]

the charges is cured by the provisions of sec 535 or 537 Cr. P C. 1935 All 617 36 Cr L J 1260 1935 Cr. C 641.

——where the accused is convicted by the application of sec 34 [illegible]

S 536 Trial by jury of offences triable with assessors and *vice versa.*

——where a case triable with assessors is substantially tried with the aid of assessors, but those assessors are not chosen according to law, the trial is illegal 1933 Oudh 351 · 34 Cr L J 1093 1933 Cr C 994

——where an offence triable with the aid of assessors is, by mistake tried by jury, the [illegible]
to the H. C under s [illegible]
and the High Cou [illegible]
trial was not illega [illegible]
1104. See also the c [illegible]

[illegible] the Jubbalpore [illegible] J with the aid [illegible] ie trial is saved [illegible] . 330

S 537. Finding or sentence when reversible by reason of error or omission in charge or proceedings.

——under sec 537 there is no distinction between illegality and irregularity though only the word ' irregularity" is found in the section [illegible]

and correct, simply because the procedure adopted was wrong. 55 A 301 1933 All 264 34 Cr. L. J. 414 1933 Cr. C. 434. F. B.

S 537. Finding or sentence when reversible by reason of error or omission in charge or proceedings—*contd*

——inclusion of kidnapping and abduction in one head is an irregularity but is not a materia
and it is condoned by sec 537
C W. N. 1074 34 Cr L J 1219

——where a charge-sheet simply charges the accused with "rioting and voluntarily causing simple hurt" without explaining what "rioting means and without mentioning that the accused formed an unlawful assembly and there is no prejudice to the accused, the irregularity in the charge-sheet is cured by the provisions of sec 535 or 537 1935 All 627 36 Cr. L J 1260 1935 Cr C 641

——failure to state the common object in a charge under sec 147 I P C is only an irregularity covered by sec 537 1935 Oudh 488 36 Cr. L J 1198

——in order that an infringement of the provisions of Cr P. C should be of such a nature that it does not come within the purview of sec 537, it must go to the root of the trial and must in effect vitiate the proceedings It must assume the jurisdiction which it does not possess 1935 Rang 98 36 Cr L J 685

——when the order passed by the lower Court even though irregular, does not cause actual or possible failure of justice the Judicial Commissioner s Court will not interfere 1937 Sind 86 38 Cr L J 596

——where in a proceeding under sec 145 Cr P C the M is satisfied regarding the existence of a dispute likely to cause a breach of the peace the mere failure to state it in the order and also the [illegible] under
36
[illegible] the
537
1935 Mad 318 36 Cr L J 1265

——where the accused was charged with having committed culpable homicide not amounting to murder but was convicted for murder under sec 302 I P C and sentenced to death held that the substance of [illegible]

——non examination of the complainant under sec. 252 Cr P. C. [illegible] specially
in revi
C. 1273
[illegible]
under s 537 1934 Lah 827 1934 Cr C 1154

S. 533. Non-compliance with provisions of s. 164 or 364—*contd.*

——failure to question the accused as to whether he is making the confession voluntarily is a material omission which prejudices the accused. The defect is fatal and cannot be cured by s. 533 1933 Oudh 315 1933 Cr C. 698.

S 535. Effect of omission to prepare charge.

——where a charge-sheet simply charges the accused with "rioting and voluntarily causing simple hurt" without explaining what "rioting" means and without mentioning that the accused formed an unlawful assembly and there is no prejudice to the accused, the irregularity in the charges is cured by the provisions of sec 535 or 537 Cr. P. C. 1935 All 627 36 Cr L J 1260 1935 Cr. C 641.

——where the accused is convicted by the application of sec. 34 I P C, absence of the specific mention of sec 34 in the charge-sheet does not make the conviction and sentence invalid, if no failure of justice has been occasioned by this omission The omission is cured by s 535 Cr. P. C. 1934 Lah. 227 35 Cr. L. J 1386 1934 Cr. C. 458

S 536 Trial by jury of offences triable with assessors and *vice versa*.

——where a case triable with assessors, is substantially tried with the aid of assessors but those assessors are not chosen according to law, the trial is illegal 1933 Oudh 351 · 34 Cr L J 1093 1933 Cr C 994

——where an offence triable with the aid of assessors is, by mistake tried by jury, the Judge may treat the trial as legal and refer the case to the H. C under s 307, if he disagrees with the verdict of the jury and the High Court can deal with the case on the supposition that the trial was not illegal 1935 Pat. 433 36 Cr. L. J 1502 1935 Cr C. 1104 See also the divergent views in 1938 Cal [illegible] 42 C. W. N. 129, [illegible]

[illegible] the Jubbalpore [illegible] J with the aid [illegible] ie trial is saved [illegible] J. 330

S 537. Finding or sentence when reversible by reason of error or omission in charge or proceedings.

——under sec. 537 there is no distinction between illegality and irregularity though only the word "irregularity" is found in the section The sole criterian given by the sec is whether the accused person has [illegible]

S 537. Finding or sentence when reversible by reason of error or omission in charge or proceedings—*contd*

——inclusion of kidnapping and abduction in one head is an irregularity but is not a material error unless failure of justice follows and it is condoned by sec 537 1934 Sind 164 1934 Cr. C 1266, 37 C. W N 1074 34 Cr L J 1219 1933 Cal 676

[illegible]

——failure to state the common object in a charge under sec 147 I P C. is only an irregularity covered by sec 537 1935 Oudh 488 36 Cr L J 1198

[illegible]

——when the order passed by the lower Court even though irregular, does not cause actual or possible failure of justice the Judicial Commissioner's Court will not interfere 1937 Sind 86 38 Cr L J 596

——where in a proceeding under sec 145 Cr P C the M is satisfied regarding the existence of a dispute likely to cause a breach of the peace the mere failure to state it in the order and also the grounds of his being so satisfied is not fatal defect and is curable under s 537 if it has not occasioned a failure of justice 1935 Oudh 316 36 Cr L J 656

——Magistrate s re-hearing two prosecution witnesses whom the accused did not want to re hear is an irregularity curable under s 537 1935 Mad 318 36 Cr L J 1265

——where the accused was charged with having committed culpable homicide not amounting to murder but was convicted for murder under sec 302 I P C and sentenced to death, held, that the substance of [illegible]

——non examination of the complainant under sec. 252 Cr P. C. [illegible] 'ly [illegible] on [illegible] Cr. P. C. is curable under s. 537 1934 Lah. 827 1934 Cr. C 1154

S 537 Finding or sentence when reversible by reason of error or omission in charge or proceedings—*contd*

——failure to frame separate charges is a formal defect which is cured by sec 537 if no prejudice has been caused to the accused 1934 Oudh 244 35 Cr L J 935

——the disregard of express provision of law in s 234 is not a mere irregularity such as could be remedied 1934 Oudh 325 35 Cr L J 1048

——a joint trial of the accused in contravention of sec 239 is illegal The illegality cannot be cured by sec 537 1933 All 354 34 Cr L J 863

——joinder of more than three distinct offencess of criminal breach of trust in one trial is an illegality vitiating trial 1933 Rang 325 34 Cr L J 1179

——even in a case in which an imperative rule of procedure has been broken, e g where several persons have been improperly tried together, it is not enough to vitiate the trial or proceed ng unless such irregularity or omission has worked actual injustice to the accused 61 C 588 1934 Cal 482 : 35 Cr L J 952

——a misjoinder of charges must be regarded as a material defect going to the root of the trial and consequently cannot be cured by the provisions of sec 537 41 C W N 1112, 1934 Bom 255 36 Bom L R 495 1933 Nag 327 34 Cr L J 673 25 M 61 P C *fol*

——a joint trial which is contrary to the provisions of sec 233 is illegal and if the Court considers that the accused has been prejudiced sec 537 cannot be invoked to cure such illegality 1937 All 714 1937 Cr C 119

——non-compliance with s 233 does not disturb the conviction where the accused was not misled by the error and there was no fa lure of justice 59 C 1233 36 C W N 505 55 C L J 685 I R 1932 Cal 504 138 I C 705 1932 Cr C 337

——but when the joint trial on the actual facts of the case has not caused any prejud ce to the accused or entailed any failure of justice the proceeding should not be quashed, more so when no protest or complaint is made against the procedure adopted 1936 Cal 753 1936 Cr C. 1043

[illegible] id 11 of the 537 Cr P C 933 Cal 433 s not curable

[illegible] with the copies of statements [illegible] ility which cannot be cured by [illegible] 40 but if there has been no [illegible] 1935 Sind 145 1935 Cr C

S 537. Finding or sentence when reversible by reason of error or omission in charge or proceedings—*contd*

——a judgment which does not strictly conform to the privisions of sec 367 in not illegal on that ground, an error of this type is a mere irregularity which is curable unless it has caused prejudice to the accused. 1937 Nag 122.

——where there is no proper compliance with s 222 the conviction should be set aside 1934 Pat 132 35 Cr L J 693

——where there has been no complaint under s 195 Cr P C the conviction of an accused under s 182 I. P C. is illegal and cannot be cured by s 537 1934 Oudh 186 35 Cr L. J 789

——a neglet of the strict provision of s 326 Cr. P. C does not make the constitution of jury illegal or render the trial a nullity if no failure of justice is occasioned, the defect is cured by sec. 537 1933 All 941 1933 Cr C 1561

——failure to take and record the opinion of all the assessors on all the charges as required by s 309 Cr P C is not a mere omission or "irregularity" to which s 537 applies 1934 Oudh 354 35 Cr L J 1066, *contra* It is an omission which can be cured by s 537 unless it has occasioned a failure of justice Where conclusions arrived at by the S J were in accordance with the opinion of the majority of the assessors, the omission could not be said to have caused any failure of justice 1933 Lah 910 1933 Cr C 1297

——failure to examine the accused again when a Crown witness is examined after the defence evidence is over, does not vitiate the conviction if no prejudice is caused It is at most an irregularity curable by s 537 1934 Sind 67 35 Cr L J 1175

——where there has been a clear and deliberate non compliance with secs 342 and 364 Cr P C no question of prejudice arises and the irregularity is not curable under s 537. 1934 Nag 213 35 Cr L. J 1457

——the failure of the Judge to question the accused about a confession, which forms an integral and substantial part the prosecution case, is a serious omission, not covered by s 537 1938 Sind 97

——where proceedings are started under s 145 Cr P C on complaint by the agent of one of the parties claiming possession and subsequent proceedings are conducted between the agents of the rival parties without notice being issued to the real owners and an order is passed in favour of one party, the procedure was bad and was not binding on the real owner and the irregularities could not be cured by s 537 1934 All 853 1934 Cr C 1043

——the failure to give necessary notice under s. 87 Cr P C does not amount to more than an irregularity which can be cured by an application of sec 537 1934 Lah 987 1934 Cr C 1391

——non-compliance with the express mandatory provisions of sec. 342 cannot be condoned under s 537 1934 Oudh 457 35 Cr. L. J

S 537. Finding or sentence when reversible by reason of error or omission in charge or proceedings—*contd.*

1417, 1933 Nag. 192 · 34 Cr. L J. 340 (87 I. C. 427, 109 I. C. 123) *fol.*

——omission to comply with s 356 (3) Cr. P C. is a mere irregularity and if the accused has in no way been prejudiced, it is cured by s 537 38 C. W. N 659 1934 Cal. 636 · 35 Cr. L J 1479 1934 Cr. C 929

——when s 195 was amended s 537 (b) became unnecessary and was hence omitted The irregularity in proceedings taken under s 476 meant irregularity in the actual proceedings such as in the inquiry mentioned in the section and did not apply to the irregularity in the complaint itself which was the result of such proceeding S 537 (a) applies to a complaint and therefore the pure technical irregularity in the heading of such document may be cured. 1934 Lah 981 1934 Cr C. 1375.

——where the trial has been by jury the appeal is limited to

——a M. who holds only second class powers has no jurisdiction to try a case under s 420 I P C , it is a matter which goes to the very root of the case and is not an irregularity covered by s 537. 1933 Lah 1009 1933 Cr C 1554, (1925 Mad 367, 1921 Lah 63) *Ref.*

——non compliance with ss 155 and 162 would not vitiate the

another under whose
t sustainable and the
regularity so as to be
o 34 Cr. L. J 1092.
d be heard after the

conclusion of the whole of the defence evidence, a breach of this is an irregularity but does not vitiate the trial in the absence of any prejudice 1932 Lah. 103 1932 Cr C. 123 135 I C. 209 33 P. L. R. 891 · I. R. 1932 Lah 81.

S 537. Finding or sentence when reversible by reason of error or omission in charge or proceedings—*contd.*

——non compliance with sec 221 (1) Cr. P. C. that is omission to give sufficient particulars in the charge is no ground for setting aside a conviction if such omission had occasioned no failure of justice. 34

—— hearing of one party in the absence of the other is illegal

Cr. C. 37

——the failure to record the reasons with sufficient fulness under *s 370 (1) of the Code is a defect* curable under *s 537* 36 C W N. 852 I. R 1932 Cal 587 139 I. C 244 33 Cr L J 729 1932 Cr. C 632

——the omission on the part of the M to make a record of what he saw on the spot and to file it as required by s 559-B is a mere irregularity. 1932 All 28 1932 Cr C 37 I R 1932 All 50 135 I. C. 226 33 Cr L J 124 1932 A L J 523

——permission of the authorities mentioned in s 83 Registration Act is necessary before an accused can be prosecuted under s 82 of the Act A prosecution without sanction is illegal and not merely an irregularity which can be cured 1934 All 963 1934 Cr C. 1291 F. B.

S 539-A Affidavit in proof of conduct of public servant

S. 539-B. Local Inspection.

——a M. made a spot inspection without issuing notice to the parties but the accused was by chance present and the M. passed a compensation order in favour of the accused which showed that he was unduly influenced by his personal inspection of the spot. The M failed to record a memorandum of the facts observed by him Held, that as the M entirely neglected to comply with the provisions of sec 539 B, the irregularities could not be cured as failure of justice had been caused 1937 Sind 125 38 Cr L J. 783.

——under this sec. the memorandum of local inspection should be drawn up without unnecessary delay and all the members of a Bench of Magistrates should join in any inspection made 1932 Mad 676 · 138 I C 608 33 Cr L J 655 1932 M W N 645 1932 Cr C 834

——inspection being an essential part of proceedings, must be conducted by the whole Bench trying the case 17 N. L J 269 1935 Nag 77 1935 Cr C 346

——the Court is not expected to base its judgment on its own inspection note which may however necessitate no more than technical compliance with law that there should be substantive evidence apart from the instruction note 35 Cr L J 708

——a S J who makes a local inspection and prepares a memo-
nt, commits an illegality which
randum so prepared must be
1496 1934 Cr C 1379
ot relied on anything it saw or
s no prejudice caused to the
ction notes It is a curable
111.

——the M cannot try the case on the spot of the local inspection 18 N. L J 320

——this sec does not contemplate a procedure by which the presiding officer would to all intents and purposes put himself in the position of a witness in the case. 1938 Pat 185

——the omission on the part of a M to make a record of what he saw on the spot and to file it is a mere irregularity 1932 All. 28 1932 Cr C 37 33 Cr L J 124, 1931 All. 433 : 1931 Cr C. 705, 1931 Oudh 388 1931 Cr. C. 320

——omission to make a note of memorandum is not a fatal one and can not have any practical effect in the decision where the local inspection has not much bearing on the case at all 39 Cr. L J 427.

S 540 Power to summon material witnesses or examine person present.

——the purpose of sec 540 is not to enable one party or the other to fill up the gaps in his case and to improve it by new matter at a late stage but to enable the Court to act in the interest of justice when he considers such action necessary 1937 Pat. 246 38 Cr. L. J. 657.

S 540 Power to summon material witnesses or examine person present—*contd*

——summoning of Courtwitnesses is entirely a matter for the Court to decide and it is not for the accused to insist It is open to him to summon them in defence, if so advised 1936 Nag 250 1936 Cr C 1042.

– a M should not examine any witness under this sec merely because the complainant chooses to suggest the witness but when he himself thinks that the evidence of the witness is essential, he is not only allowed to examine the witness but is by law bound to do so, even though the suggestion emanates from the complainant 1936 All 269 37 Cr L J 522 1936 Cr C 246

——even if the evidence though not essential, is yet expedient, then the M does not exceed his authority in putting these witnesses into the box 1933 Sind 49 34 Cr L J 591 1933 Cr C 175

——under this sec a M can call and examine a prosecution witness at the instance of the accused and once such evidence has been admitted on the record the M is bound to consider it while deciding whether a charge should or should not be framed 1933 Lah 561 34 Cr L J 735 1933 Cr C 819 21 W R 61 (Cr) *Ref*

——if a witness examined under s 540 gives evidence which is against the accused the accused is not entitled to a further opportunity to produce more evidence to rebut his statement though there may be cases where in the interest of justice a Court would normally give the accused such an opportunity 1936 All 269 37 Cr L J 522 1936 Cr C 246

——where long after the closing of the case a M examines a a witness under s [illegible] accused under s 342, failure to [illegible] the trial and s 540 cannot cur[illegible] 34 Cr. L J. 519 1933 Cal 3

——when after the close of the argument the M admits a document as fresh evidence in favour of the prosecution he should ask the accused if they wish to give any rebutting evidence and if necessary should grant an adjournment 37 C W N 1168

——it cannot be said that sec 540 relates only to the prosecution witnesses it is equally available to the defence and it is mandatory if the evidence appears to the Court to be essential for the just decision 1934 Mad 735 1934 Cr C 1400

——where in a case of dacoity the police do not call some important witnesses it is the duty of the Court to summon and examine them. 1934 Rang 103 35 Cr L J 1362

——the committing M is perfectly justified in acting strictly in accordance with law when he examines the witnesses whom the investigating police officer has examined in the course of his investigation. 1934 Oudh 362 35 Cr L J 1042 1934 Cr C 1054

S. 540. Power to summon material witnesses or examine person present—*contd.*

——if a material witness is not examined by the prosecution without sufficient reason, he should be examined as a Court witness otherwise a retrial will be necessary. 1937 Rang 139 · 38 Cr. L. J 1040

——if the Public Prosecutor produces new witness at the Sessions trial and if he is not allowed to examine him as his own witness then it would be the duty of the Court to examine him as a Court witness and opportunity of cross-examining must be allowed both to the prosecutor and to the accused 1934 Sind 78 35 Cr L. J 1170 1934 Cr C 737

——s 540 does not authorise a S J. to summon witnesses after the trial has been concluded and the assessors have given their opinion. 35 Cr L J. 1002 35 P. L R. 390

——where a Court-witness was examined in chief by the defence and was then virulently cross examined by the complainant and also by the Court, held, that it was fantastic that a Court witness should be thus treated No questions ought to be put to a Court-witness except by or through the Court 1937 M. W. N. 1238

——there is nothing in s. 139-A Cr. P. C which could exclude the exercise of the Court's inherent powers under s 540 58 C 461 · 1931 Cal. 527 I R 1931 Cal 862 134 I C 574 · 1931 Cr. C. 679

S. 540 A Provisions for holding trials etc. in the absence of accused.

——the language of sec 540 A, cannot be interpreted as authorising a M to dispense with the attendance of an accused who is too ill to attend the Court 1936 Rang 114 · 37 Cr L J. 436

——the accused should not be granted exemption from attending the Court for reasons which are not covered by s 540-A, 1932 All. [illegible] before [illegible]

nullity. 1938 Lah 216

S. 544 Expenses of complainants and witnesses

——it is entirely within the discretion of the Court which summons a witness to order how much expenses should be allowed to him and which party should pay it The Court may within certain limits order [illegible]

S 544. Expenses of complainants and witnesses—*contd.*

recovery of any additional amount, much less can he claim it from the presiding officer of the Court 1937 Pat 477 18 Pat L T. 434

S 545 Power of Court to pay expenses or compensation out of fine

——where a boy is killed by an offence caused by the accused under s 304-A and accused is ordered to pay fine, the mother is entitled to compensation out of fine 1935 Pesh 102 36 Cr L J 1208 1935 Cr C 854

——s 545 cl (1) (b) allows the Court to order the whole or any part of the fine recovered to be applied in the payment to any person of compensation for any loss or injury caused by the offence. The offence must clearly be the offence of which the accused has been convicted 1935 Rang 199 36 Cr L J 1030 1935 Cr C 741.

——where the deceased woman with full knowledge and of her own [illegible] qualified midwife at the [illegible] out of fine made by the [illegible] 4 I P C is illegal and [illegible] C 1257

——the Court cannot award compensation to the injured party out of the fine recovered from the accused who have been convicted under s 149 and 325 I P C 1934 Lah 519 1934 Cr C 807

——where two accused were convicted and sentenced to fines of Rs 30 and Rs 80 respectively and compensation of Rs 40 out of the fine if recovered was to be awarded to one B a witness and one of the accused courted jail but the other paid up his fine of Rs 80 held that B must get compensation in full when such amount was available in recovery of fine 1937 Sind 3 38 Cr L J 292

——where an order under s 545 (1) (b) directing payment of compensation is passed on conviction of an accused, the necessary consequence, of the setting aside of the conviction on appeal is the setting aside of the sentence, and the order of compensation 1936 Rang. 247 37 Cr L J 832 1936 Cr. C 523 but where the conviction is set aside without giving notice to the complainant there is clearly a grave irregularity 1933 M W N 729

S. 546 Payment to be taken into account in subsequent suit

——the witness fees should not be included in the costs In awarding costs, the Court can take into consideration only the costs set out in s 546-A (1) (a) and (b) 1935 Rang 163 36 Cr L. J 970

S 546-A Order of payment of certain fees paid complainant in non-cognizable cases

——where the complainant did not pay any process-fees for issue of process on his own witnesses or on the accused nor any the petition of complaint, held, that he was not entitled to sum under s 546-A (1) 1935 Rang 208 · 36 Cr. L. J. 1048.

S 547. Moneys ordered to be paid recoverable as fines

——compensation granted under s 250 Cr. P. C. is recoverable as it were a fine and the methods of recovering fine are provided in sec 386 Cr. P. C. 1932 Pat 301 1932 Cr. C. 773 33 Cr. L. J. 958 **F. B**

S. 548. Copies of proceedings.

——a third person who is not a party to the case is not a person ... efore is not ... 1932 Bom.

... iust not be construed narrowly It cannot be said that the father of a convicted ... 4 1931 ... which ... d 429 32 Cr. L J 689

——the prosecution is bound to supply the defence free of cost with copies of the statements of witnesses who have not been examined before the committing Magistrate and whom the prosecution proposes to examine for the first time in the Sessions Court. 1934 Bom 487 1934 Cr C. 1413

S 551 Powers of superior officers of police

——there is no authority to think that the word "may" in this sec, means "must" 1932 Cal 850 33 Cr. L J 657 · 1932 Cr C. 881

S 552 Power to compel restoration of abducted females

——if the 'unlawful detention" is for a purpose which is an "offence" or is legally prohibited or which is a civil wrong it would ... is light the ... rary to the ... constitutes ... 374 1933 Cr. C. 1573

——when a girl is living at another man's house with her consent but against the will of her mother who is lawfully entitled to have charge of her, the question whether an order under s. 552 should be issued or not depends entirely on the question of the girl's age. 1935 Rang ...

... id s. 552 being, in some ... should be followed in cases ... 374 : 1933 Cr C 1573 ... to produce before him a ... der s 552. 1936 All. 354 : 37 Cr L J 713 1936 Cr. C 418

——the Dt M. has no power to order a preliminary inquiry by the sub-divisional M. in a case under s. 552. The provisions of sec. 202 do

S. 552. Power to compel restoration of abducted females —contd

not apply to a case under s 552 A preliminary inquiry is not permissible. 1933 Nag 374 1933 Cr C 1573 4 Bom L R 609 *Rel on*

——there is nothing in s
passed under that section on
of execution and it is open to th
order using such force as ma
L J 713 1936 Cr C 418

——the omission to have the statement of the complainant on oath may be a defect in procedure and might vitiate any order for the restoration of the woman under sec 552 Cr P C 1936 All 469 37 Cr L J 857 1936 Cr C 614

S 554 Power of Chartered H Courts to make rules for inspection of records

——the only valid reason for refusing an inspection would be that the inspection of the particular record was against public interest 1931 All 364 132 I C 327 32 Cr L J 864 1931 A L J 405 1931 Cr C 620

S 556 Case in which Judge or M is personally interested

fication might have been removed and that there was technical defect more serious than could be overlooked 1935 Sind 1 36 Cr L J. 824 1935 Cr C 42

——committing Magistrate giving evidence as to identification parade is not personally interested under this sec 1932 Lah 196 13 Lah 461 33 Cr L J 188 1932 Cr C. 217

——it is not desirable that a M who issued a warrant for the search of premises where gambling was refuted to take place should himself try the case subsequently and a conviction by such M cannot stand 1934 All 987.

S 559 Provisions for powers of Judges and Ms being exercised by their successors

——*Quaere*—where a sentence of fine passed by a M holding powers under s 23 Ordinance XI of 1931 remains unexecuted and the Ordinance also comes to an end in 1932, whether the Dt M can direct any other M to execute the sentence? 40 C W. N 694: 37 Cr L J 574 1936 Cal 149 1936 Cr C 291

S 561-A. Saving of inherent power of H. C

——this sec. merely declares that such inherent powers as the Court may possess shall not be deemed to be limited or affected by anything contained in the Code. The inherent powers of the Court do not include the power to revive an order which has been made in the criminal appellate jurisdiction 38 C. W. N 25 1933 Cal. 870 : 34 Cr L J 1100 1933 Cr C 1481.

——where there are clerical error in the draftsmanship of the order made by a Bench of the H C. that Court may correct them if the ends of justice required that course 38 C. W. N. 25 34 Cr L. J 1100 1933 Cr. C 1481.

——where a complaint is found to be vexatious or to disclose *prima facie* a case for disposal by Civil Court, the H C can quash the proceedings 34 Cr L. J 377 34 P. L R 126

...cutory stage
C. is under
...nt harassment
of a subject of the Crown by an illegal prosecution. 1933 Oudh 387 1933 Cr C. 1088.

——the H. C. has inherent jurisdiction to pass any order necessary to prevent abuse of the process of any Court. Not every immoral act is criminal and it is an abuse of the process of the Court to attempt to create a new crime in order to compel men to conform to a high standard of probity in business dealings or to force them to execute their promises 1938 Mad 129

——under the Cr. P. C. inherent powers may be exercised by the H. C. and not by a Court of inferior jurisdiction 1935 Sind 84 36 Cr. L. J. 831 . 1935 Cr. C. 370.

——this sec. confers no inherent power and is confined in its application to the High Courts Even the Lower Courts can exercise inherent powers provided there is no express provision in the Code. 1931 Pat. 81 32 Cr. L J. 551 1931 Cr. C. 201.

——an order passed under s 421 dismissing an appeal filed under s 419 is *prima facie* final Such an order cannot be vacated under s. 561-A unless it is proved that either of the conditions precedent to passing of the order as laid down by s 421 has not been fulfilled and this is a question of fact. 1935 Sind 84 36 Cr L. J. 831 1935 Cr. C. 370 F. B.

——where one of the assessors expressed that he was determined to help the accused, held, that he was not a proper person to act as an assessor and in such a case the H C has power to order a new trial [illegible] Cr. C 1385

[illegible] s dismissed on
[illegible] to review his
[illegible] 1935 All 466 .
[illegible]

S. 561-A. Saving of inherent power of H. C.—*contd.*

——the H. C. has no inherent power under s 561-A to grant bail to a convicted person on the ground that he intends to move the Privy Council for leave to appeal against his conviction 40 C W. N 1313 1936 Cal 809 1936 Cr. C. 1121

——It would be incorrect to interpret s 561-A as having any

under the powers preserved to the H C by s 561 A because it is a matter out side the specific provisions of the Code 40 C W. N 1313 1936 Cal 809 1936 Cr C. 1121

——the H C has power to expunge passages from judgment

I C 850

——where the accused charged under s 366 are acquitted on appeal and a subsequent prosecution is started against them under ss 497 and 498 on the same facts with a view to defeat the effect of the previous acquittal, the proceedings being an abuse of the process are liable to be quashed 37 Cr L J 538 1936 Cal 234 1936 Cr C 357

——the H C cannot review an order dismissing a criminal revision application passed under s 369, after it has been signed and sealed 35 Cr L J 1485 1934 A L J 704

—— process" is a general word which means in effect anything done by the Court The Court may alter or review its own previous order for the examination of witness in Court and substitute one for his examination on commission 1931 Pat 81 1930 Cr C 201

——the use of extraordinary powers under this sec ought to be reserved as far as possible for extraordinary cases They are not usually invoked when there is another remedy available Orders in the nature of attachment before judgment are not consistent with the spirit of criminal proceedings as the accused is presumed to be innocent until he is found guilty 58 B 152 1934 Bom 74 35 Cr L J 1028

——a wrong sentence of whipping may be corrected by the H C. though it has already dismissed an appeal from the order. 1934 Pat 551 1934 Cr. C 1195

——whether the provisions of sec. 561-A Cr P C. could not be

the

L J 606

S 562 Power of Court to release upon probation of good conduct

——it is undesirable to send a youth of 16 or 17 to prison for a first offence unless it be a serious one The question is not whether the

——the language of s 562 makes it clear that the order of imprisonment on failure to furnish security cannot be added to the order of release on probation of good conduct, 1934 Lah. 582 1934 Cr C 913

——the terms "dishonest misappropriation" and "cheating' refer to the offences in the Penal Code which are denoted respectively thereby, namely, s 379 *pro tanto* s 380, s 403 and s 415, not to dishonest misappropriation and cheating in all their forms So where the accused is convicted under s 406 no order can be made under s 562 (1-A) and the accused cannot be released after due admonition 1934 Rang. 203 35 Cr L J 1241 1934 Cr C 891

——s 562 (1) as amended in 1923 is also applicable to offences

case of a conviction under any law It is not limited to a conviction under the Penal Code The term "previous conviction" applies to a conviction under a local law, so a person who has been previously convicted under the Bombay Prevention of Gambling Act is not, therefore, entitled to the benefit of sec 562 (1) 59 B 514 36 Cr L. J. 1376 1935 Bom 188.

——the expression 'punishable with death or transportation for life should be interpreted disjunctively and women, convicted of an offence for which transportation for life is one of the punishments provided, may be released on probation under s 562 1932 Nag 130 1932 Cr. C 666

——admonition is not intended to apply to offence of the nature of defamation 1932 Nag 97 1932 Cr C 519 33 Cr L J 835

——burglars should not be released on probation of good conduct as it is a serious crime 1932 Lah 258 33 P L R 215 1932 Cr C. 323 33 Cr L J 500

——as the offence under s 394 is punishable with transportation for life, a youth of 18 years convicted under s 394 and 451 cannot be bound down under s 562 1934 Lah 131 1934 Cr. C. 311.

S 562 Power of Court to release upon probation of good conduct—*contd*

——s 562 is not appropriate, where a person is convicted under s 181 I P C, for deliberately swearing a false affidavit 1934 Nag.

not out means appl ed ite is no ground for showing leniency or sympathy 1934 Sind 93 35 Cr L J 1149 1934 Cr C 752

——where the trial Court inflicted sentence of simple imprisonment for six months for an offence under s 309 I P C and also released the accused under s 562 Cr P C on probation of good conduct held, that the two sentences could not stand side by side and should therefore be quashed 1934 Lah 514 1934 Cr C 805

——there is no reason or justification for reading the proviso to sub sec (1) into sub-sec (1 A) Both on the language of the sec as it stands, and on a consideration of the policy of the legislature it is clear that the proviso to sub sec (1) does not extend to the powers conferred by sub sec (1 A) A third class M is therefore entitled to

1933 Lah 393 34 Cr L J 779

be misled into the Where, therefore, the locality and it the fact that the accused has not been convicted before is not itself a sufficient reason for inflicting no penalty upon him 1933 Sind 44 34 Cr L J 420

——when after conviction, the case was referred to a M for action to be taken under s 562 (1) and the accused person appears before the M under s 380 he can only be treated as a convicted person and a M acting under that sec cannot set aside the conviction and acquit him 1933 Mad 728 34 Cr L J 1045

Magistra

36 C W

S. 565 Order for notifying address of previously convicted offender.

——an order under s 565 to remain under police surveillance cannot be passed against one who is not a previous convict. 1934 Lah 675 1934 Cr. C 1001.

——an accused was convicted under s 379/75 I. P. C and was sentenced to a term of imprisonment for two years The M. further ordered the accused under s 565 (1) Cr P. C. to restrict his movement after his release from imprisonment to a certain area for a term of three years, held, that the order was illegal. 1937 Rang. 164 · 38 Cr L J. 722

CRIMINAL TRIAL

Abetment.

——it is a matter of common experience that charges of abetment are easily made against accused persons and are difficult to refute. Hence conviction should be confirmed only after considering or analysing the evidence 1938 Pat 34

——it is open to the prosecution to charge abetment generally, and then if the evidence did not establish abetment other than in one particular form, to rely on this particular form for conviction. 1938 Cal 125.

Absence of accused.

——it is an essential principle of English Criminal Law that the trial of an idictable offence has to be conducted in the presence of the accused and for this purpose trial means the whole of the proceedings including sentence In cases of misdemeanour there may be special circumstances which permit a trial in the absence of the accused, but *on trials for felony the rule is inviolable unless possibly the violent* conduct of the accused himself intending to make trial impossible renders it lawful to continue in his absence. 1933 P. C. 218 38 C. W N. 562 34 Cr. L J. 886 1933 Cr. C. 1302

Acquittal—Honorably acquitted

[illegible] 'ted" is one which is unknown [illegible] form of order used in Courts [illegible] Where on a prosecution for [illegible] pted the explanation of the [illegible] ilty, the acquittal is full and presumably in the language of the Govt authorities "honorable' 61 C 168

Admission by accused.

——if a person voluntarily elects to put on record a statement of his criminal activities and thereafter neither repudiates that statement

Admission by accused—*contd.*

[illegible] whatever [illegible] In such [illegible] iblish the [illegible] Cr L. J 334 1934 Cr. C. 315 F. B.

Appeal

[illegible] not to be regarded as some sort of a second appeal on a question of law. 1935 All 814 36 Cr. L. J. 907 1935 Cr. C. 916.

——it is not for the H C to adjudicate upon the merits of the verdict of the jury, and unless there has been a misdirection or material non-direction, which has vitiated the trial, the H C will not disturb the jury's verdict 1938 Cal. 460.

Appearance of counsel.

——in proceedings under the Cr. P. C no power of attorney for the appearance of counsel is necessary, 1933 Lah. 145 34 Cr L. J. 616 1933 Cr. C. 267

Autre fois acquit.

——a complaint disclosed several offences. Accused were summoned for one of the offences, but for default in appearance of the complainant they were acquitted A fresh complaint in respect of other offences though on the same facts is not barred. 1935 Cal. 571 : 36 Cr. L. J. 1364 : 1935 Cr. C. 979.

Benefit of doubt.

——the mere fact that an accused is given benefit of doubt does not entitle his co-accused to an acquittal where the evidence against him is far stronger 1933 Oudh 399 1933 Cr C. 1245

——Where there is no evidence showing any particular part taken by the accused and the most that can be said against them is that they were spectators of the occurrence, they should be given the benefit of [illegible] Lah 473 37 Cr L. J 748.

——the weakness of the defence must not be allowed to bolster up a weak case for the prosecution. 1933 Oudh 457 : 1933 Cr. C. 136

Benefit of doubt—*contd*

——where the evidence of the prosecution witness is not convincing and the verdict of the assessors is unanimous that the case against the accused is *not* proved, the accused *is entitled to the benefit of doubt*. 1933 Lah. 714 1933 Cr. C 920

——the benefit of any doubt that may arise in the mind of the Judge is to be given to the accused It is not permissible for the trial Judge to gloss over the deficiencies in the evidence of the prosecution witnesses by any special pleading 1934 Oudh 485 35 Cr L. J 1489.

——where there are no eye-witnesses to a murder, the circumstantial evidence requires careful scrutiny 1936 Pat 486 37 Cr L. J 1061 Where on the evidence it was found that the deceased had an illicit intimacy with the wife of accused among several other women but the other things were not satisfactorily proved held that the accused was entitled to the benefit of doubt 1934 Lah 10 35 Cr L J 615 1934 Cr C 29

——if a Judge trying a criminal case feels any qualm about the case he must give the accused the benefit of doubt 1935 Pat 19 36 Cr L J 195

——*when there is doubt as to the interpretation of a particular rule* or section, the benefit of doubt must go to the accused person who is alleged to have disobeyed the rule 1935 All 121 36 Cr L J 630 1935 Cr C 109

——where the case is suspicious it would not be right to convict the accused 62 C 656 1935 Cal 304 1935 Cr C 491, 1936 Pat 534 37 Cr L J 1123 1936 Oudh 413 37 Cr L J 1065, 1934 Oudh 405 35 Cr L J 1118

——where the evidence of a witness was read over to him and not objected to by him but the lower Courts proceeding on the footing that there was a mistake a 'not' being left out from a sentence convicted the accused without recalling the witness to give him an opportunity to correct any possible mistake held, that the matter being doubtful the accused should get the benefit of doubt and that the case should be reheard 62 C 629 39 C. W N 396

Burden of proof

405 1933 Cal 800 1933 Oudh 333 1933 Cr C 780

Burden of proof—*contd.*

——the conviction should never be based on the failure of the

1937 Nag 274 1937 M. W N 987.

——when the prosecution evidence is rejected, the accused cannot be convicted on a modified version of the defence 1934 Oudh 424 35 Cr. L. J. 1347

——if the accused is involved by the evidence in a state of considerable suspicion he is called upon for his own sake and his own safety to

do so by relying on any facts brought out in the case even when they do not appear in his own statement or defence evidence *1936 Nag 119* 37 Cr. L J 1035 1936 Cr C 621

the accused is to prove a *prima facie* case when the burden of an issue is on them 61 C 168 (54 Cal 223 24 C W N 619) *Ref* 58 C L J 405 1933 Cal 800

Charge

——where there is a clerical error in the form in which a charge is [illegible] vitiated and a

prejudiced by

930

two places but

only one place was mentioned in the charge, held that as the accu was not misled thereby it did not affect the conviction 1936 Pat. 358 37 Cr. L J 862

Charge—*contd.*

——in framing a charge under sec. 372 I. P. C., in respect of alleged hiring out of a minor girl by the accused to various visitors, *separate charges should be drawn up in respect of each of the visitors.* 40 C. W. N. 1188.

[illegible] onspiracy, the same certainty and [illegible] respect of a charge of a substantive [illegible] any limit as to the period over [illegible] require any specific acts to be mentioned 42 C. W. N 246 1938 Cal 195

——a charge of conspiracy alleging that the accused "agreed with each other or with others unknown" does not set up two alternative conspiracies but a single conspiracy in which the accused were certainly involved and other unknown persons also may have been involved 42 C. W. N. 246. 1938 Cal 195

——it is waste of public time that charges of conspiracy, which [illegible] cure the defect. 1935 Pat 431 36 Cr L. J. 1506 1935 Cr. C 1102.

Civil case and civil dispute

——pledge of jewels to secure loan—loan repaid but the pledgee denying pawn and misappropriating jewels—amount not disputed—criminal prosecution is sustainable though the transaction is of civil nature, as there was no dispute as to amount 62 C. L. J 487 1936 Cal 673 · 1936 Cr C. 930

——where in a partition suit the mother accepted the valuation of [illegible]

Cr C. 794.

Compensation

——the fact that the parties are on bad terms is not a sufficient ground for holding that a charge brought by one against the other is a false one 1938 Rang 209

Confession

——confession which implicates a number of other persons whilst carefully safeguarding the conduct of the confessor cannot be read

Confession—*contd*

from recording a
frequently it must
ded in open Court.

particularly when
d upon unless it is
1938 Pat 308, 9
C W N 474 *Rel on*

——a retracted confess on should not be the basis of a conviction unless it is substantially corroborated by independent evidence 1938 Pat 290

——a confession by an accused of an exculpatory nature and subsequently retracted cannot be used against a co accused though it may be admissible as against himself 1938 Pat 352

——if a confession is once admitted but from subsequent evidence it transpires that the confession is defective in law and therefore inadmiss ble, it is not only open to the Judge but it would be his duty to withdraw the confession from the jury 39 C W N 27 1934 Cal 853 1934 Cr C 1368

——where two accused were tried at the same time for abduction and rape respectively and the Judge admitted the confess on of the accused tried for rape though retracted against the accused appellant,
the only other
Judge should
at the confes
Cal 479

Connected case

——though there is noth ng contrary to law in a trial being conducted in one Court and an inquiry into an accusation arising out of the same facts in another Court such a procedure is h ghly inconvenient and where the evidence is bound to be the same there is a possibil ty of the two Courts independently arriving at a different estimate of the evidence 1933 Nag 78 34 Cr L J 519 1933 Cr C 315

Conviction

——there is no d fference between the expressions ' found guilty ' and ' convict ' 1933 Bom 1461 1933 Cr C 1420

——the statement of an accused is not to have tl e force of testimony of a w tness to whom an oath has been adm nistered, conviction based solely upon it would be bad in law 1933 O 34 Cr L J 935 (22 A 445 1929 All 1) *fol*

Costs.

——although criminal Courts are empowered to order an accused if he asks for an adjournment, to pay costs to the complainant, this power should not be exercised in such a manner as to place obstacles in the way of the accused properly defending himself. 1937 Pat. 131 : 38 Cr. L. J. 484.

——where in the course of a private prosecution in a non-cognizable case, the Court orders the Inspector of the Court to prosecute the case, thereafter the Court cannot order the complainant to pay the costs of the prosecution as it then ceases to be a private prosecution. 1935 Pat. 455 : 1935 Cr. C. 1167.

Cross-cases.

——where there are two cross-cases it is the duty of the M. to dispose of them together. 1934 Lah. 458 : 1934 Cr. C. 704.

——where two cases are tried side by side and the M. disposes of them together it is generally not possible for him while disposing of one case to refrain from taking impression from the evidence in the other case, where such reference has not occasioned any failure justice the conviction need not be set aside. 1934 All. 651 : 35 Cr. L. J. 1415 : 1934 Cr. C. 863.

——in two cross-cases, the evidence in each was taken one after another, the two cases were heard by one argument and one judgment was delivered, held, that though the procedure was irregular no prejudice was caused to the accused and the H. C. should not therefore interfere. 1935 Cal. 548 . 36 Cr. L. J. 1339 : 1935 Cr. C. 940.

[illegible]

647 : 36 Cr. L. J. 763 : 1935 Cr. C. 650.

——there can be nothing irregular in trying a case and a counter-case to a conclusion before different assessors, and afterwords pronouncing judgment in both so long as he tries the one quite independently of the facts in the other. What must be made clear is, (1) that the trial must be separate, *i. e.*, before different assessors and separate judgment delivered; (2) that the conclusions in each case must be founded on, and only on, the evidence in each case, and (3) that if the Judge considers himself unable to detach himself from extraneous considerations, a transfer may be necessary to deliver the Judge from embarrassment. 1933 Mad. 367 : 34 Cr. L. J. 175 : 1933 Cr. C 550 : 56 M. 159 F. B., (1929 M. W. N. 881 and 1932 M. W. N. 692) *Diss.*

Defence.

——a defence of alibi if true ought to be raised at the earliest possible moment. 1936 Lah. 233 : 37 Cr. L. J. 751 : 1936 Cr. C. 199.

——the accused may take up one line of defence but it is open to his pleader to take up another and alternative line of defence. 1936 Rang. 1 : 37Cr. L. J. 293 : 1935 Cr. C. 1319.

Defence—*contd.*

——it is perfectly open to an accused to raise any plea of law or fact. There is nothing like *resjudicata* in a criminal trial so long as it does not terminate in either acquittal or conviction so as to attract the provisions of s 403 1936 Nag. 55 37 Cr L J. 474 1936 Cr. C. 367.

——a plea in defence to a charge of murder to the effect that the accused was temporarily not responsible for his acts is not sustainable in law so long as the non responsibility is not due to any disease or infirmity of the mind So called divine influence or inspiration" cannot be pleaded in defence to what is otherwise murder or any other offence 1937 M. W N. 93

See other cases under the heading ' new plea" and "pleading" below.

Duty of Court

——it is no part of the prosecution s duty to try by hook or crook to obtain conviction , and it is the duty of the M sternly to discountenance such methods, which are but a travesty of justice 58 C L J. 405 1933 Cal 800 1933 Cr C 1375

——where after the close of the arguments the M admits a document as fresh evidence in favour of the prosecution he should ascertain from the accused whether he wished to adduce any rebutting evidence apart from the question of cross-examining the witness and if necessary should grant an adjourment 37 C W. N 1186

——even where the accused refuses to plead and shows himself ready to go to jail it is nevertheless the duty of the Court to sift the

——it is the duty of the Judge to avoid all language which may suggest a bias in favour or against any particular class or section of the people 1934 All. 776 35 Cr L J 919

——a M ceases to be an executive officer when he is sitting in Court to try a criminal case He cannot be allowed to invoke the intervention of his superior executive officers in a matter concerning the discharge of his judicial duties for which he owes responsibility only to the H C 15 Lah 407 1935 Lah 160

carried out, but all things should be done decently and in order 1938 Cal 15

Duty of prosecution.

—— vernment officials efore the Court as 330 . 37 Cr. L. J 310.

——the prosecution need not call witnesses irrespective of consideration of number and of reliability. If it does so, confusion is very apt to result, and never is it more likely to result than if the prosecution calls witnesses and then proceeds almost automatically to discredit them by cross-examination Witnesses essential to the unfolding of the nar be called by is Cr will are prepared to speak against that case are respectable witnesses who ought to be believed, then the prosecution ought to withdraw the case. On the other hand, if the defence comes to the conclusion that the witnesses are witnesses of truth who ought to have been called, then it is the duty of the defence to call them Hence, simply because the prosecution does not call certain witnesses, the Court need not raise the presumption under sec 114 Ill. (g) Evi. Act when the absence of the witnesses is explained properly. 37 C. W N. 1098 · 1933 Cal. 600: 1933 Cr. C. 964.

——where the prosecution has failed to examine an important witness in the committing Magistrate's Court on whose evidence the prosecution and the Judge largely rely, and with whose evidence the securing a conviction. It is the duty of the prosecution to bring out in the Court result in an Judge to be 1933 All. 314

——the duty of Public Prosecutor is not to support at all costs a theory, but to investigate the offence and to determine the guilt or innocence of the accused. He is to represent not the public but the Crown, and his duty should be discharged fairly and fearlessly He is also under a duty to disclose to the defence the existence of any fact which may help the accused 1933 Rang. 378 1933 C. Cr 1486, 1933 Oudh 265 54 C L J. 1009.

——it is the duty of the prosecution to prove beyond any reasonable doubt, that the accused is guilty. It should not improve its case by

Duty of prosecution—*contd*

utilizing the defects in the evidence of the defence witnesses or by the false statements which the accused may make 1936 Rang 90 1930 Cr. C 114

——the Public Prosecutor is not bound to examine persons if he has reason to believe that they would not support the prosecution case Nor is the Court bound to examine any person as a Court witness, unless his evidence appears to be essential to the just decision of the case 1935 Pat 95 36 Cr L J 348 1935 Cr C 208

——when the prosecution omits to examine material witnesses examined by the police during investigation without establishing that they have been won over by the defence there will be adverse inference 1937 All 182 38 Cr L J 401

——when the material witnesses summoned are not examined, the inference is against the prosecution 15 Lah 407 1935 Lah 160

——there is no duty upon those charged with the preparation of prosecution case to produce in Court every person examined by the pol ce But in a murder case the prosecution cannot withhold a witness who has supported the plea of alibi taken by one of the accused 1934 All 908 1934 Cr. C 1167

——the prosecution is not bound to cite for the prosecution every witness who professes to know something about the case and it is not desirable that the Court calls witness at the instance of the defence as prosecution witnesses and then deprives prosecution of the opportunity of cross examining them 1935 Rang 506 1935 Cr C 1303

——the prosecution cannot ask the appellate Court to look with suspicion the evidence of their own witnesses, when during the whole trial they were not treated by them as hostile witnesses and no suggestion was ever made that they were not truthful witnesses If they were not truthful witnesses, they ought never to have been called by the prosecution and recommended to the Court as witnesses of truth 63 C 18 37 Cr L J 439

——the examination of the approver after the examination of all the w tnesses who are supposed to corroborate h s statement is unsatis factory 1934 Lah 171 1934 Lah 69

——the duty of prosecuting counsel in examining his own witness and in conducting the case is to elic t the truth rather than to exercise his ingenuity in press ng the case agai ist the accused and what might be a forensic duty in a civil action is not necessarily one in a criminal case 1937 Nag 274

——the prosecution should exercise a careful discrimination and avoid the filling up of evidence and the over burdening of the record and waste of time 1933 All 690 34 Cr L J 967 1933 Cr C 1202

Duty of prosecution—*contd*

groups ought to be separately and consecutively numbered either by letters or figures or other distinguishing marks 1935 Cal 184 39 C W N 368 62 C 572 36 Cr L J 808

——where in a criminal case a clear and definite order of the M is relied on as having been disobeyed the prosecution must prove what the order really was and its actual transgression 1933 Bom 148 34 Cr. L. J 771 1933 Cr C 460

Evidence.

Admissibility

——in considering admissibil ty the Court should always lean in favour of the accused and exclude all evidence tendered by the prosecution which is of doubtful or remote relevance 63 C 929 1936 Cal 73 64 C L J 154 37 Cr L J 394

——Courts do not enterta n objection on the ground of admiss bility of evidence which are taken for the first time in appeal 1933 Cal 190 34 Cr L J 430 1933 Cr C 236

——*irregular conducting of search would affect the weight to be* attached by jury to the finding of property but would not make such property inadm ssible in evidence 1933 Cal 187 34 Cr L J 369 1933 Cr C 233

——it is true that if an accused person makes a confession the

Cr L J 1463

——where the case of two accused are quite antagonistic to each other, evidence of witness called on behalf of one of them is admissible as against the other, specially where the witness has been cross examined by the other 1934 Rang 98 35 Cr L J 905 1934 Cr C. 519 1937 Rang 540

——the dictum that the statements of w tnesses are not admissible

s of persons

rly wrong,

to ac

481

Cr. C 113

Evidence—*contd*

——evidence of prosecution witness seeing the accused go away soon aft
declarat
sufficient

the passers by, the witnesses can speak not only of the nature of the child s cries, but even as to what the child said so far as it explains their conduct 1938 Sind 97.

——where the Crown seeks to rely on an admission made by the accused in his written statement to fill up a blank in their evidence, which, if unfilled, must result in an acquittal, they must take the alleged admission *in toto* If the conviction is based entirely on such an admission, it cannot be sustained The Court must deal with the prosecution case on its merits and not look to the defence case to see whether there are materials available to bolster up the case for the prosecution 40 C W N 313

Alibi evidence, value of

——it is of course easy to give evidence of alibi, but where the case for the prosecution depends entirely on the identification in somewhat doubtful circumstances of the accused the evidence of alibi cannot be lightly brushed aside 1937 Rang 267 38 Cr. L. J 890

——wherever a defence of alibi is set up and that defence breaks

establish an *alibi* is no ground for coming to the conclusion that the accused person has committed the crime 1933 Oudh 432 1933 Cr C 1317

Appreciation

——in a murder case the fact that the prosecution witnesses are relatives of the deceased is not valid reason for discarding their evidence, 1936 Lah 233 37 Cr L J 751

e witness for the
d of the Court as
itnesses are easily
1936 Lah 278

Evidence—*contd.*

——if it is proved that a witness for the prosecution has given false evidence it is unsafe to rely upon him at all. 1933 All. 401 34 Cr L. J. 765

——it is settled law that a person cannot corroborate himself. 1938 Rang 177 **F. B.**

——it is common experience that discrepancies do occur even in the statements of perfectly honest witnesses which are really due to differences in individual faculties with regard to observation, recollection and recitals of details 1934 Lah. 710 1934 Cr C. 1020

——a certain amount of latitude for mistake must be given to the witnesses in their evidence and a distinction has to be made between discrepancies that matter and those which do not. 1937 M W. N. 557, **F B.**

——minor discrepancies will always be found wherever honest witness without previous consultation are endeavouring to give each his own account of an incident so sudden and startling as a murder at midday in middle of the village street 1933 Sind 166 34 Cr L. J 808, 38 Cr L J 84.

——where the delay in formally arresting the accused is satisfactorily explained, the prosecution story should not be disbelieved as being fabricated on account of such delay 1934 Lah 158 1934 Cr. C. 343

——where a complainant alleges forgery by antedating a document he is not obliged to confine himself to the evidence of the witnesses [illegible] Cr. C. 807

[illegible]

Cr L J 913

——two separate standards should not be set up for testing the veraity of the defence witness and the prosecution witnesses 1934 Pat. [illegible]

[illegible]

297 36 Cr L J 1307.

——the fact that the accused did not cross-examine the witnesses is really of no value in a case where he was unrepresented and was ignorant and could not be expected to know the legal presumption that uncross examined evidence is probable 38 Cr. L J 889

——it is a salutary rule that the evidence of an accomplice should be corroborated It is unsafe to act on the uncorroborated evidence of an accomplice The question whether such evidence has been sufficiently corroborated is, however, largely a matter for the Court which is trying the case 39 C W N. 754, 1935 All 132 36 Cr L J. 617.

Evidence—*contd*

weight to
nless there
erfere with
findings of the trial judge on the question of fact 1933 Sind 325 1933 Cr C 1077 F B, 1938 Pat 49

——no communal consideration can or ought to weigh with the Court in deciding a dispute as regards possession of a bull in which the simple question is which of two parties, if any, has made out a claim to be entitled to possession of the disputed bull 1938 Cal 17

Chemical examiner, report of

——it is not enough for the chemical examiner merely to state his opinion He must state the grounds on which he arrives at that opinion His report must be full and complete 1933 All 394 34 Cr L J 754 1933 Cr C 664

Circumstantial evidence

——when the Court is asked to convict an accused person on circumstantial evidence alone, the evidence before the Court should be absolutely conclusive 1933 Pat 606 1933 Cr C 1349 it must be of such a nature that it would be inconsistent with his innocence 1938 Pat 308

——there is no rule of law that if there be no eye-witness to the murder the accused cannot be sentenced to death Circumstantial evidence
witness

——

if it is so
suffer to prevail 1934 Sind 84 35 Cr L J 1142

——where it is a case of circumstantial evidence, the Court has to see whether the evidence taken as a whole points conclusively towards

in cases of circumstantial evidence the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation upon any other
Circumstances of strong susp
sufficient to justify a convic
explanation of them 38 C
712 1934 Cr C 551

——where the case for the prosecution is based on circumstantial

Evidence—*contd*

not be one of guilty 1937 P C 179 41 C W N 805 38 Cr L J. 573 **P C**

——where a person has injuries on his body it cannot be presumed merely from such circumstance that he was present at the scene of occurrence 1938 Lah 150

——where the sole fact proved against an accused charged with having murdered a child for the ornaments is that he was seen in the company of the child not far away from where the corpse was found sometime before the murder and the accused was commonly seen with the child previously it is not safe to infer that the accused was concerned in the murder 1938 Mad 336

Conspiracy proof of

——conspiracy is generally a matter of inference deduced from certain criminal purpose in common between them The acts and declarations must be acts and declaration of some member or members of the conspiracy and the circumstances from which conspiracy is sought to be deduced must be circumstances with which some members of the conspiracy are shown to be connected 1938 Cal 51

Contradictory statements

——where a witness makes two contradictory statements one of those must be true and the Court may apply its mind to discover which of those statements is true and draw conclusions therefrom The Court must be allowed to use its judgment in sifting truth from falsehood 1934 Oudh 507 1934 Cr C 1386

Demeanour and conduct of accused

——the demeanour of an accused person is entirely irrelevant for deciding the question of the guilt or innocence of the accused 1937 M W N 876

——the fact that an accused person remains silent when denounced in the presence of witnesses by another person as the latter's assailant is admissible in evidence The degree of weight to be attached to his silence depends upon the nature of the case But such silence cannot be allowed to supplement a too weak case for the prosecution and if the silence of the accused is to be regarded as an important point for the prosecution the Court should by reason of sec 342 Cr P C invite the explanation of the accused as to why he did so 1937 Rang 83 38 Cr L J 524 **F B**

Hostile witness value of evidence of

——the evidence of hostile witness is evidence in the same manner and to the same extent as that of any other witness whether called by prosecution or defence 1937 Pat 34 38 Cr L J 271

——it is not right for a Public Prosecutor to declare a prosecution witness as hostile It is the duty of the P P or of the counsel represent-

Evidence—*contd*

ing the Crown to formally ask the leave of the Court to cross-examine the offending witness. 1936 Cal 675 1936 Cr C. 932

Insanity.

——where an accused pleads insanity the opinion of an expert on lunacy ought not to be brushed aside on the strength of the lay opinion of the trial Judge 1935 Oudh 143 36 Cr L J 392.

——a man who knows that he is doing what is wrong cannot be held to be insane merely because he is caused to do the act by an irresistible impulse produced by deceased The burden of proof resting *on the accused is certainly not so onerous or heavy as that resting* on the prosecution to prove the facts which they have to establish to bring the guilt home to the accused 44 L W 694 **P. C**

Foot-prints comparison of

——where a tracker compares the admitted foot prints of an accused person with the impression that was left on the tracker of the foot prints which he saw when he went to the spot where the crime was committed such a comparison made about two months after the occurrence where the original tracks were not preserved cannot have much value 1933 Lah 299 1933 Cr C 399

Handwriting or signature

——there is considerable danger of a miscarriage of justice when a [illegible]

having been written in their presence 1937 Pat 146 38 Cr L J 136

Map of the place of occurrence—points to be noted

——the person who prepares a map for the purpose of a criminal trial ought not to put upon it anything more than what he sees himself Particulars derived from witness examined on the spot should not be noted on the body of the map but on a separate sheet of paper annexed to the map as an index there to, the spots being marked as A, B C, D, etc If the index is of a legitimate nature there is no reason why it should not be exhibited along with the map 16 Pat L T 730 1936 Pat 11 37 Cr L J 235

Medical evidence

[illegible]

may displace direct evidence of the facts 41 C. W. N [illegible] P. C.

Evidence—*contd*

——med cal officers must not forget that the Court must decide matters regarding age beyond reasonable doubt and not on a pre ponderance of probab lity If they are convinced beyond reasonable [illegible]

Mode of giving and recording evidence

——in a case in which several persons are charged under ss 302 and 392 I P C the Court should not be placed in such a situation that it will have to make an assumption for the purpose of connecting the accused with the crime upon the evidence of identification Evidence should be given and recorded so as to enable each of the accused to know what the allegations of the prosecution is as regards the articles that each of them has produced 39 C W. N 368 36 Cr L J 808 62 C 572 1935 Cal 184 **Sp B**

—— [illegible]

would go either to support or destroy the evidence which the witnesses have given is not the proper procedure and it is of little help to the Court 62 C 572 39 C W N 368 1935 Cal 184 36 Cr L. J 808 **Sp B**

[illegible]

Cr C 1306

Opinion of police

——where the police noticed that there was a sameness in the *modus operandi* in certain housebreak ngs and came to the conclus on that it must have been the work of a gang held that the op nion as to the ex stence of gang was relevant 1937 Nag 17 38 Cr L J 237

——the opinion of a pol ce officer that a certain witness is young and he is a type likely to be upset by questioning is a matter of observa t on and so receivable if not as evidence 1938 Nag 52

——it is a mistake to exclude supervision notes from the police diaries sent to the Courts 1938 Pat 290

Evidence—*contd.*

Post-mortem certificate

[illegible]

Quantum of evidence

[illegible]

——the strength of the evidence against the accused is a matter to be considered before but not after conviction Where the S J convicted the accused of a murder by assassination but sentenced them to imprisonment for life instead of to death and stated his reason to the effect that the evidence was not of a sufficiently convincing character to justify the capital punishment, held, that the reason for passing the lesser sentence was wrong. 1933 Pat. 149 34 Cr L. J 349 1933 Cr. C 404. **Sp B**

Retracted confession of co-accused

——a retracted confession by a co-accused is admissible in evidence but the rule of prudence is to seek corroboration in material particulars before the conviction of a co accused is based thereupon, and the nature of the corrobor [illegible]
1938 Pat. 108

——a retra [illegible]
accused making [illegible]
co-accused 1938 Lah 252.

Sufficiency of evidence.

——where the assassins were in the house where the occurence took place and the son of the murderd person fired shots and the accused person had several injuries on his legs which he could not explain but there was no other evidence against him, held that the unexplained wounds were not sufficient to prove his complicity in the crime. 1933 Lah 87 1933 Cr C 1116

——when prosecution case is strongly supported by probabilities and circumstances it should be accepted as true even though no independent witnesses are examined 1933 Oudh 123 34 Cr L J 609

——where the evidence is evenly balanced in weakness and the case is one of oath against oath, the prosecution should be withdrawn. 1933 Rang 119 34 Cr L J 781

——it cannot be laid down categorically as a rule of prudence that no Court should convict the accused solely upon the uncorroborated

Evidence—*contd*

testimony of the complainant even if it believes his evidence 1934 Oudh 244 35 Cr L J 935

——where there were no actual eye-witnesses to a murder and the deceased had made several statements naming his assailants but had admitted that one person was falsely implicated through enmity, held that even in the case of accused aga nst whom there were consistent statements, unless the statements were corroborated by independent *witness, no conviction was possible because of false implication of one* 1934 Rang 98 35 Cr L J 905, 1934 Pesh 18 35 Cr L J 874

Value of evidence

——in the joint trial of the accused for the same offence if the evidence of a witness is not believed by the Court as against some who are acquitted, there is no reason why it should be believed as against the others 1934 Oudh 286 35 Cr L J 992, 1934 Oudh 13 35 Cr L J. 681 1933 Oudh 404 1933 Cr C 1277, but when a witness is disbelieved on the ground of enmity against some of the accused he may be relied upon against other accused 1933 All 314 55 A 379 34 Cr L J 689

——statements of witnesses produced by one accused is admiss ble against a co accused but it will be received with great caution 60 B 148 1936 Bom 154 37 Cr L J 688

——where the Court considers one part of the evidence of a witness to be not free from doubt it may well refuse to act upon it without [illegible] Court implies in [illegible] safe to accept [illegible] as deliberately committed perjury in falsely implicating one accused it is impossible [illegible]

——the first information report cannot form substantive evidence in itself It can be used only to corroborate or contradict the evidence of the witness who made it 1934 Sind 100 35 Cr L J 1332 1934 Nag 94 35 Cr L J 95 The omission to mention the name of the eye witness at the time of first information is very significant and tends to discred t the testimony of such person secured by the pol ce three days after the crime, 1934 Oudh 315 35 Cr L J 836 but not so when the informer was not eye w tness 1933 Lah 1005 1933 Cr C 1516

——if the writer of the first information report is not examined it cannot be ascertained what exactly was the vers on of the informant and whether the report is a genuine version or a coloured one 1934 Cal 458 35 Cr. L J 904 1934 Cr C 663

Evidence—*contd.*

——where a Judge admits a first information report into evidence in Sessions trial, he should leave the matter entirely free to the jury as to what weight they should attach to the evidence. He should not give his reasons for admitting the report into evidence. 1938 Cal 460.

——where a prosecution is withdrawn before charge under s. 494 [illegible] co-accused in the [illegible] against accused but [illegible] corroboration. 39 [illegible] 1935 Cr C 865. [illegible] conviction 1938 Rang. 282.

——the best persons to testify to the character of a man must be persons with whom he associates The fact that witnesses are caste-men of the accused is no ground for discarding their evidence. 1934 All. 735 · 1934 Cr C 936

——the evidence of prosecuting agency may be perfectly good and legal proof 1934 Lah 870 1934 Cr. C 1251.

——in ordinary murders unconnected with factious feuds there is no reason to suspect the evidence of relatives Different considera-tion may apply where there is *marpit* in a village between two factions 1934 Lah 870 1934 Cr C 1251.

——the fact that prosecution witnesses are relations or friends of each other is insufficient to discredit their testimony unless it is proved that they are either partisans of the complainant or are inimical to the accused 1934 Lah 158 1934 Cr C 343, 1938 Lah 150.

——the fact that one prosecution witness owed some money to another prosecution witness, is no reason for rejecting his testimony. 1933 Oudh 148 34 Cr L J 498

——the children are a most untrustworthy class of witnesses, for when of tender age, they often mistake dreams for reality, repeat gl bly as of their own knowledge what they have heard from others and are greatly influenced by fear of punishment, by hope of reward and by desire of notoriety. 1933 Lah 667 34 Cr L J. 606 1933 Cr. C 889 See also 1938 Pat 153 below.

——where the evidence on both sides is of an interested nature, the truth of either version and the guilt of the accused must be judged in the light of surrounding circumstances 1933 Lah 1055

——where in a case of murder the confessional statements of the accused are relied on, the defence can rely in the inquest report which states that the police-officer could not at that time ascertain who committed the murder The accused is entitled to a copy of the inquest report. 37 C W. N. 732 1933 Cal 861 1933 Cr C 1478

——the evidence of a witness proved to have committed perjury is of no value 1933 All 834 55 A. 639 1933 Cr C 1460

——where an approver is sent up for trial on resiling in the Sessions Court from a statement made in the committing Magistrate's

Evidence—*contd.*

Court, his statement should be treated as a confession and his conviction might follow on this confession alone without corroboration. 1938 Lah 135.

——the existence of a few small blood-stains on a man's shirt or … important … by other … el beyond … nion of the …

——where the jury is unanimous in its opinion upon certain evidence, the Judge should be reluctant to differ from such opinion apart from strong reasons which would induce him to do so 1938 Cal. 220 65 C. L. J. 423

——master and servant were returning to their village at night, master was murdered by unknown persons, servant also attacked and being terror-struck fled The accused who were on unfriendly terms … case depending … doubtful whether … not be convicted.

… y available and unless received before any possibility of coaching is eliminated is notoriously dangerous and it is unsafe to convict on the evidence of a child. 1938 Pat. 153.

——an unsworn testimony of a young child is admissible in evidence. S 13 of the Oaths Act expressly provides for cases in which the provisions of ss 5 and 6 of the Act have not been carried out. 1938 Mad 490, 1914 Mad 293 *Rel on*

——the poverty of a witness is no ground for discrediting a witness. 1938 Lah 534 **F B.**

Identification.

——the evidence as to identification of accused must be sufficient to exclude with reasonable certainty the possibility of mistake. 1933 Pat. 496 . 1933 Cr. C. 1061.

——a M conducting an identification parade, should take an …

Identification—*contd*

present whilst an identification by any other person is proceeding 1937 Rang 504

——the M should make list of the outsiders mixed with the accused and should note in what connection the witness identifies the accused and should note any mistake committed by the identifier and any complaint made by the accused 35 Cr L J 1180 1935 Lah 230 1935 Cr C 396

——identifications made at night during a dacoity or when the people are terrorized are generally of very little value 1933 Lah 299 1933 Cr C 399 1927 Cal 820 *Ref*

——it is never safe to rely on the identification of a person by his voice 1937 Rang 407

——the presence of police constable in the room where the identification is held is most objectionable 1934 Lah 692 1934 Cr C 1006, but there is no objection to the use of policemen for identification parade if proper precautions are adopted 1936 Lah 409 37 Cr L J 732

——when a witness identifies a wrong person in Court the fact that he identified the accused in the identification parade is of no value if he [illegible] owing to [illegible] 396 [illegible] s had no [illegible] fence (2) [illegible] 30 [illegible] person is the minimum desirable proportion to satisfy the Court 1935 All 653 36 Cr L J 1139

——where articles shown to the witness at the time of investigation are very dissimilar with the articles supplied for mixing no value is to be attached to the identification evidence 1934 Oudh 151 35 Cr L J 915

——when a witness to identify states in Court that he can identify none there is nothing to corroborate and the evidence of any previous statements express or implied made by him in the course of identification proceedings is not admissible 1934 Lah 641 1934 Cr C 973

Inherent power of Criminal Courts.

——the criminal Courts have an inherent power to make such orders as may be necessary for the ends of justice This inherent power is not capriciously or arbitrarily exercised It is exercised *ex debito justitiæ* to do that real and substantial justice for the administration of which alone Courts exist But the Court s decision must be based on sound general principles and should not be in conflict with them and with the intentions of the legislature as indicated in statutory provisions. 1938 Cal. 258

Inherent power of Criminal Courts—*contd.*

——where the S J accepted the majority verdict of not guilty given by the jurors in respect of offences alleged to have been committed

[illegible]

without jurisdiction 38 C W N 1211 · 1934 Cal 756 1934 Cr C 1164

Investigation.

——the police should inspire full confidence in the publ c and conduct itself in such a regular manner as not to afford any genuine cause of complaint to those with whom it deals 1934 Lah 692 1934 Cr C 1006

——where the approver made full disclosure to the police the fact that the witnesses were not examined by the police for a period of two months after the arrest of the approver is a sufficient reason for discrediting their testimony 1934 Lah 346 35 Cr L J 1046 1934 Cr C 565

Judgment.

——the M should ordinarily write regular judgments except in very simple case 1935 Pat 495 36 Cr L J 1375

——no disparaging or libellous remarks should be made upon any person who has had no opportunity to defend himself and who has not even appeared in the w tness box 1933 Sind 91 34 Cr L J 367

——reference to a statement made by another accused in another case is entirely improper It clearly ind cates bias of the M against the accused from the starting 40 C W N 29 36 Cr L J 1366 1935 Cal 621.

——once a judgment has been sealed s gned and delivered it

[illegible]

H C sitting as a criminal no other Judge including the No power of review resides al mistakes if any under ss 369 and 561 Cr P C 38 C. W N 25 34 Cr L J 1100 1933 Cal 870

——the High Court would not expunge any remarks made as to the conduct of counsel even from an *ex parte* order of the lower Court unless it is fully satisfied that the remarks are not deserved 1933 All 949 1933 Cr C. 1569

Jurisdiction.

——the only persons capable of weghing the respective advantages or disadvantages of trial before different types of tribunals are the accused persons themselves and it is their opinion which is entitled to serious consideration 1936 Cal 529 37 Cr. L J 1902 1936 Cr. C 785

——when, as in the case of continuing offence two Courts have jurisdiction to try a case both of them can try the case Where one Court has arrived at a conclusion and delivered a judgment it would be open to the accused to plead *autrefois acquit* or *autrefois convict* 1933 Lah 852 1933 Cr C. 1108

——a M taking dying deposition cannot record evidence in the committal Court as in that the accused is precluded from questioning the M. as to what happened when the dying deposition was taken. 1937 Rang 467

——the absence of an accused person from the place where the offence is said to have been committed or completed does not affect the jurisdiction of the Court 1933 Sind 333 1933 Cr C 1130

——the jurisdiction which a Court possesses for the purposes of revision must be expressly granted to it 1932 Rang 288 1933 Cr C 1084

——a M cannot usurp jurisdiction to himself by evading the provisions of law 1935 Sind 221 1935 Cr C 1272

Jury

——precision of description in charging the jury is most necessary and specially in a case of murder 62 C L J 43 1936 Cal 186 37 Cr L J 673 1936 Cr C 308

——statements made by the Judge in his charge to the jury form part of the judcial record and as such must be taken as correct 1936 Sind 49 37 Cr L J 783

——when the verdict of the jury depends entirely upon the question of whether the witnesses are to be believed considerable weight should ordinarily be attached to the verdict of the jury 1935 Pat 433 36 Cr L J. 1502

——where the jury refuse to convict an accused on a mere uncorroborated testimony of an approver they cannot be said to be acting perversely 1936 Cal 407 37 Cr L J 1149 1936 Cr C 670

——in criminal trials with jury the fact should be sufficiently

Cr C 749

——inclusion of two contradictory cases at the same trial or in one charge is wrong 40 C W. N 1409 1936 Cal 429.

Jury—*contd*

——where the S J. allowed the jury to make an experiment by torchlight in the absence of the accused in order to test the evidence as to recognition of the accused in a dacoity case, held, that there was a great irregularity involved in it by reason of which the jury ultimately brought in their verdict. 38 C. W. N 1154 1934 Cal. 744 60 C. L. J. 194.

——in a case where there is a general charge of conspiracy against a number of accused to commit dacoity and at the same time, a charge against the accused for having committed a dacoity, it is most necessary [illegible] guish between [illegible] rge of conspi [illegible] on the charge [illegible]

Motive

——it is not the duty of the prosecution to prove an adequate motive in every case, 1934 Lah 368 35 Cr. L J. 1283, although proof of motive may often be an enlightening circumstance 1937 M W. N. 993.

——the practice of beginning with the evidence of motive and [illegible]

——when once the crime has been proved beyond all reasonable doubt, it is unnecessary to consider the question of motive 1935 Oudh 265 36 Cr L. J 529 1935 Cr C 547, 1934 Oudh 405 35 Cr L. J 1113 1937 Oudh 236 38 Cr L J 424 1936 Rang 60 37 Cr. L J 418

——when the direct evidence breaks down motive need not be discussed 1933 Oudh 265 34 Cr L J 1009

——the absence of motive on a charge under s 302 is not a sufficient reason for coming to the conclusion that the witnesses in the case are telling lies when they have no reason to do so, or that the confession by the accused is false 1936 Pat 245 37 Cr L J. 543

[illegible] reason [illegible] use [illegible] 9 [illegible] isly [illegible] vic [illegible] is [illegible] the innocence and guilt of the accused the Court has to see next what

Motive—*contd.*

external corroboration there is connecting the accused with the crime 1933 Pat 517 1933 Cr C 1166.

——the statements regarding motive of the accused made by the deceased in his first information report and dying declaration are admissible under s 32 Evi Act as circumstances of the transaction which resulted in the death of the deceased 1938 Pat 52

New case

——when the prosecution is not proved the Court cannot set up a new theory and convict the accused 1933 Oudh 566 1933 Cr C. 1580

New plea.

——when a new defence is raised at a late stage that circumstance goes to some extent against the new defence unless such a defence could not have been raised at an earlier stage 1933 Pat 481 34 Cr L J 828

Plea, alternative

——the right of private defence may be pleaded even alternatively with the plea of *alibi*, and it should not be denied to an accused person merely because he does not specially plead it provided the circumstances are such as clearly entitle him to the exercise of that right 1933 Pat 568 1933 Cr C 1342

Plea of guilty.

What is?

——a plea of guilty can only be made in response to a charge made by the Court and an informal admission as to the guilt does not amount to a formal plea of guilty and such an admission has not the same binding effect as a plea of guilty An admission of guilt in proceedings under s 110 Cr. P C or in proceedings of a more informal character does not amount to a formal plea of guilty 1936 Cal 292 37 Cr L. J 118 1936 Cr C 529

By some accused

——when some out of several accused jointly tried plead guilty and are convicted on their own plea and they are then examined as witnesses for the prosecution, it is not for the other accused to complain about it or to say that the confessing accused should not have been convicted on their own pleas 39 C W. N 188 1935 Cal 580 36 Cr L J 1322 1935 Cr. C 1004 **Sp B**

——where three persons are tried together, one charged with murder and the other two as abettors, and the accused charged with murder pleads guilty, the others have the right to challenge the evidence implicating that accused 1936 P. C 242 40 C W. N 1164 37 Cr L J 914 1936 Cr C 757. **P. C.**

Procedure.

Accused's right to file written statement.

——there is no authority or provision for the practice of allowing an accused person in a Sessions trial to put in a written statement 39 C. W. N 1309 1935 Cal 687 1935 Cr. C. 1079

Court must enforce process once issued under s. 257

——when a defence witness fails to appear on the date fixed in [illegible]

taking all possible steps to secure the attendance of the witness 42 C. W. N. 843

Sanction after complaint

——where a complaint was filed against a public servant under an offence requiring sanction by Local Govt and the statement of the complainant was duly taken and later on the M applied for necessary sanction and when the sanction was obtained the case was transferred before another M who proceeded with the case without further taking a fresh complaint or fresh verification, *held* the latter M should have re-examined the complainant and re-verified the complaint, but his failure to do so was merely a technical irregularity 1938 Bom 50. (1919 Cal 433. 1915 All 417 1924 Lah 258) *Rel on* (1917 Bom 33 and 1927 Bom 432) *Dist*

Retrial

[illegible]

of their own were required to undergo two trials, held, that the case [illegible] might have [illegible] summing [illegible] tion is insufficient to support a conviction, a re-trial cannot be ordered simply to give the prosecution another chance of producing further and better evidence 1938 Cal 361

Cataloguing of witnesses.

——a cataloguing of [illegible] never be a substitute for [illegible] point, which is so neces[illegible] picture with all its light [illegible] *Rel. on.*

Procedure—*contd*

Misjoinder

justified in ordering the accused to be retried, if the accused do not desire the harassment of a new trial. 1938 Cal 222

Joint trial, one accused absent.

——where eight accused are jointly tried and one of the accused is absent throughout the trial being granted an illegal exemption, the trial of other accused with that of the absentee being one and indivisible, the whole trial is vitiated 1938 Lah 216

Joint trial, legality of,

——in every case it has to be considered how far the evidence establishes association and how far the various persons tried are prejudiced by a joint trial Four charges of attempt to commit rape were ... ntly ... her ... rial

When trial commences

——the trial in a criminal case commences with the arraignment of the accused that is to say, when the charge is read over to the ... practice ... India. ... to be ... F B

Exhibit of order-sheet copy to be retained.

——when the original ordersheet in a case is marked as an exhibit, the copy placed on the record must be certified to be a true copy 1936 Pat 249 37 Cr L J 318 1936 Cr C. 273

Accused as prosecution witness

——a person was a ring-leader of a gang against whom there was evidence as against others He was in custody during investigation but was released on bail by the M The police obtained the order cancelling bail and produced him as witness, held, that he was a competent witness and failure of the M to proceed against him did not invalidate the trial 1937 Nag 17 38 Cr L. J 237, **F B**

Defence of poor prisoner

——with regard to the defence of prisoners who are too poor instruct lawyers those whose duty it is to select lawyers to def at the expense of the Crown should not treat the selection as a mat

Procedure—contd

patronage for the benefit of the lawyer so appointed The selection should be made from among young men of marked ability and where the persons actually appointed do their work very badly the trial Judge has the duty to use his greater experience in the interest of justice 1938 Pat 153

Splitting up case owing to misjoinder.

——certain persons were charged with conspiracy to commit [illegible]

two groups of the accused persons and ordered a *de novo* trial of one of them held, that the M had acted rightly in the exercise of his inherent power 1938 Cal 258

——it should ordinarily be possible for a M to decide the question of joinder after the case has been opened by the Public Prosecutor The M. need not wait till the stage of framing of charges before he makes up his mind whether to split up a case as such a course is most inconvenient 1938 Cal 251, (1936 Cal 753 62 C 946) *Ref*

——a Court of appeal or revision in dealing with a question of misjoinder must look to the position as it appeared when charges were framed 1938 Cal 258

Order to ask questions thrice not justified

——though it is the duty of the Court to see that the questions are properly understood by the witnesses and the cross examining lawyer does not take undue advantage of the foolishness or simplicity or the want of understanding of the witness a general order that each question must be repeated thrice can hardly be justified 1938 Pat 238

Transfer of calendar cases

——calendar cases triable by a First class M cannot be transferred to a Second class M with a direction to treat them as preliminary register cases, with the intention of committing them to the Sessions Court for trial, even if such calendar cases are counter-cases to preliminary register cases or that the facts of the calendar cases are complicated If he thinks that the cases should be tried by the Sessions Court, he should proceed to commit them to the Sessions Court under s 347 1938 Mad 529 (1933 Mad 367, 1934 M W N. 56) *Ref*

Production and Inspection of documents

——ordinarily inspection should only be given of particular documents shown to be relevant and not of documents in bulk Nor is the party produicng the documents in compliance with the Courts order under s 94 Cr P C precluded from objecting to their subsequent inspection The Courts should not allow inspection of bankers' books

Production and Inspection of documents—*contd*

under the Bankers' Books Evidence Act unless a *prima facie* case is made out for thinking that there is some matter on which the books of the Bank are bound to be relevant. 1938 Bom. 33, **Sp B.** (5 Bom L R 980 and 15 C. 109) *Expl.*

Proof of guilt.

——it is a cardinal basis of the criminal law that the true guide to the proving of guilt or innocence is whether the story of the prosecution is believed or not The rejection of the defence evidence would in no way help in determining whether the prosecution story was true or not 1937 Cal. 463 . 65 C. L. J. 83 38 Cr L. J 931, 1933 Oudh 226 34 Cr. L J 935.

——ordinarily the fact that an accused absconds is not regarded as indicative of his guilt Exception to this rule. 1934 All 776 35 Cr L J 919

——a person cannot be convicted merely because his defence is false. It is true that on the question of guilty knowledge the conduct of the accused at the time may be absolutely of the first importance 37 C. W. N 426 1933 Cal 603 34 Cr L J 1073 1933 Cr. C. 967.

——the gravest suspicion against the accused will not suffice to convict them of a crime unless evidence establishes it beyond doubt 1933 Oudh 457 1933 Cr. C 1369, 1933 Oudh 372 1933 Cr C. 1049, 1933 Oudh 257 34 Cr L J 661.

——it is not for the accused to establish conclusively and beyond all possible doubt his own innocence , but it is for the prosecution to establish the guilt of the accused. 1933 Pat 598 1933 Cr. C. 1360

Reference.

——ordinarily references to H C. from Dt Ms which involve a criticism of the order of the Sessions Court cannot be accepted. 1937 Sind 203 38 Cr. L J. 961.

Retrial

——retrial should not be ordered too lightly and should be avoided, as much as possible A retrial certainly should not be ordered where it can be established that there is really no evidence to go before a jury as that will put the accused to unnecessary harassment 39 C W N 368 62 C 572 36 Cr L J 808 1935 Cal 184 **Sp B**

Revision.

——the H C will interfere in revision when the finding of the Courts below is based upon no evidence whatsoever. 1936 Pat 499 [illegible]

ed

Revision—*contd*

—— [illegible] on precedent [illegible] Judge of the H [illegible] a certificate [illegible] d at the trial should have reserved a point or points of law 63 C. 838

Sentence

——the theory of punishment is based upon (a) the protection of the [illegible]

1933 All 690 1933 Cr C 1202 34 Cr L J 967

—— ignorance of law is no excuse but one may in awarding sentence take into consideration the fact that the accused was not cognizant of the offence committed by him. 56 C L J 539 1933 Cal 332 34 Cr L J 518 1933 Cr C 411

——one element in awarding sentences is the element of vengeance, the natural resentment of the aggrieved persons must be satisfied lest they take the law into their own hands 1936 Lah 833 37 Cr L J 1079 1936 Cr C 833

——where people combine together in order to flout lawful authority they must be given deterrent punishment 1934 Sind 34 35 Cr L J 830

——it is inexpedient for the High Court in a grave case to weaken the hands of the Sessions Court by interfering without necessity in a sentence which is not excessive 1934 Sind 78 35 Cr L J 1170 1934 Cr C 737

——in the case of a sentence of fine the amount should not be beyond the capacity of the accused to pay 1934 Lah 077 1934 Cr C 1003

——the fact that the accused is the only surviving son of his widowed mother or that he was sincerely penitent and filled with remorse after the murder, cannot be taken as a sufficient ground for imposing the lesser sentence 39 C W N 262 1935 Cal 591 1935 Cr C 1015

——in awarding sentence the moral indignation of the offence should not be considered All that is necessary to consider is what sentence is likely to prevent the offender from committing the offence again and to prevent other persons similarly situated from committing similar offences 1938 Rang 220

——where there are features in a case which render the crime inexplicable, so that although the [illegible]

Sentence—*contd*

because infection set in, the fact however would make no difference to the criminal responsibility of the person charged 1938 Rang 56

——a sentence of joint fine passed on two accused with terms of imprisonment in default in case of each of them is plainly open to the objection that it is impossible to say whether either of the convicted persons is liable to suffer the entire term of imprisonment and for what proportion of the default and as such cannot be sustained 1938 Pat 271.

——the S Judge should not sentence the accused 'to receive the supreme penalty' The sentence should direct that the accused be hanged by the neck until he be dead 1936 Rang 46 37 Cr L J 290

——where in an appeal and a reference from a sentence of death there is an unreasonable delay in the preparation of the paper book the sentence of death should not be confirmed 40 C W N 432 37 Cr L J 394 1936 Cal 73 1933 Cr C 145

——where the accused attempted to overawe a witness and to [illegible] nst [illegible] it [illegible] ind [illegible] ice 1936 Pat 175 37 Cr L J 502 1936 Cr C 253

——the argument that two l ves should not be forfeited for one should be rejected The only way in which death sentence can be altered is by the exercise of the prerogative by the King Emperor and it has got nothing to do with law at all 63 C 1089 63 C. L J 142 1936 Cal 227 1936 Cr C 380

——youth alone in every case is not such an extenuating circumstance as would justify the imposition of lesser penalty in case of murder, but it should be taken into consideration with the other facts of the case 1936 Rang 71 37 Cr L J 463 1936 Cr C 76

——where the accused is young and inflicted the injuries together with another man in the course of a bl nd assault in the dark death sentence should not be inflicted 1936 Rang 46 37 Cr L J 290

——where a woman murders a child for the sake of its ornaments penalty of death is not improper nor will the age and sex of the accused or the fact that she has recently been delivered in jail weigh as extenuating circumstance 1936 Nag 200 37 Cr L J 1047 1936 Cr C 814

——old age is no doubt a po nt to be taken into account in considering what sentence is to be imposed but in itself it is not sufficient ground for not award ng the death penalty or a conviction for murder 1937 M W N 728

Stay of criminal proceeding

——where the issues in a criminal case are likely to be includ in the issues in a civil Court which is ripe for hearing and there is

Stay of criminal proceeding—*contd*

risk of a conflict of jurisdiction, it is better that the criminal proceedings are stayed 1935 Cal 182 1935 Cr C 240

——the settled practice is not to stay criminal proceedings pending the disposal of civil suits unless there is some very good reason for doing so 1934 Pat 113

[illegible] of the Waqf Act of 1923 should be [illegible] contem [illegible] en public and private prosecutions But that is not the only test nor is priority in time necessarily conclusive The Court has to consider the circumstances of each particular case 1933 Bom 485 1933 Cr C 1589 1933 Bom 307 34 Cr L J 900, 1933 Lah 37 34 Cr L J 96

Summary trial

——in a case of theft of crops from lands when the case does not involve an investigation of any complicated question of fact or law and the case depends mainly on the consideration of a Kabuliyat and a delivery return and on the oral evidence of a few witnesses there is no objection to the case being tried summarily 39 C W N 1306

Sureties certified by pleader

——in criminal proceedings no pleader should be required to certify the solvency or fitness of sureties proposed by their clients and no criminal Court should accept such certificate as sufficient without further inquiry 1934 Sind 142 35 Cr L J 1455 1934 Cr C 1073

Trial de novo

——it is not expedient in the interests of justice that a petty case be tried *de novo* 1934 Lah 415 35 Cr L J 1447

——where proceedings are stayed under s 346 Cr P C the M by whom the case is subsequently taken up, is bound to hold *de novo* trial The second part of sub sec (2) of sec 350 would seem to refer exclusively to proviso (a) to sub-sec (1) and mean that where proceedings have been submitted to a superior M under s 349 the accused cannot insist on a *de novo* trial 42 C W N 508

Under trial prisoners

[illegible] be considered innocent [illegible] by the police officers 62 C 384 39 C W N 259 1935 Cal [illegible] 36 Cr L J 615, 35 Cr L J 1180 1935 Lah 230

EVIDENCE ACT

S 3

[illegible]

S 4

——it is not desirable that in cases where the evidence of an accomplice is tendered, the Court should call for proof of the presumption that he is unworthy of credit unless corroborated in material [illegible]

177 **F. B.**

S 8.

[illegible]

witnesses he kept silence and drew adverse inference, held, that the statements were not relevant as Illus (j) required a complaint, held further, that silence of the accused to be relevant should come under Illus (f) to s. 8 *i e* it should have proved that the accusations made by the woman against the accused were made in his presence 1938 Rang. 127.

——in a trial for conspiracy to murder the deceased, a written complaint to S D O by the deceased stating that the complaint seriously apprehended danger to his life, liberty and reputation is admissible under s. 8 (and probably also under s 32 (1)) as evidence of conduct of the deceased, an offence against whom was the subject of trial, such conduct being influenced by his fear of injury. 1938 Cal 51 · 42 C W N 129

——though the mere fact that an accused person has absconded [illegible]

of each of the persons concerned in the act The principle applies n only to evidence relevant under s 27 but also to that under s. 8 the Act. 62 C 572 39 C W N. 368 36 Cr. L. J 808 1935 184 **F. B**

S 8—*contd.*

——a ... declaration by a deceased person made in the form of [illegible] in [illegible] the testimony of *res gestæ* is always allowable when it goes to the root of the matter concerning the commission of the crime It is controlled and circumscribed by s 27. 63 C 1053 63 C L. J. 232 1936 Cal 316 1936 Cr C. 532

——when on information by the accused in his confession the police visit a place where arms are concealed, the conversations between the accused and the police during the search are admissible 63 C. 1053 63 C. L J 232 37 Cr L J. 775 1936 Cal. 316, 62 C. 572, F. B *fol.* 21 Bom L. R. 724 *Dist.*

S. 10.

——a document of which the writer is not known if found in the possession of a conspirator would not by itself be admissible for the purpose of proving the truth of its contents as against other accused The fact of possession would be evidence to show that the conspirator in whose possession it was found had received and preserved it. 1937 Cal 99 38 Cr. L. J 818 **Sp B.**

——the ciphers or cipher lists discovered at the searches, provided they are properly decoded, could not be treated as acts, words or deeds of any particular person but the fact that they existed and that the names and addresses of a number of persons who are alleged to be parties to a conspiracy as charged are mentioned in them etc, taken [illegible] legitimate inference that the [illegible]

[illegible] for guidance ... admissible as the [illegible]

[illegible] after [illegible] in [illegible] (3). [illegible] ... dy been given 38 C. W. N 1015

——the confession of a person who is dead and has never been brought to trial is not admissible under sec 10, because sec. 10 applies to acts done in furtherance of a conspiracy or which bear some relation to the conspiracy, and the acts done in pursuance there of were at an end Sec. 10 can not be extended to cover the case of a confession of a

S. 10—*contd*

person who was co-accused or who might have beeen a co-accused on the charge of conspiracy and the offences which were its purpose or committed in pursuance of it. 1938 Sind 94, (25 Bom. L. R. 248, 38 Cal 169) *Rel on*, 1935 Cal 26 *Diss*

——the question whether a letter written by an accused after his arrest to another accused person is admissible in evidence depends upon whether the provisions of sec 10 have been complied with, the fact of the accused being under arrest is not material as it is not in the nature of mere confession 1932 Cal 557 1932 Cr. C 576 137 I. C 317 33 Cr. L J 456 I. R 1932 Cal 292

——"anything said" includes statements made, speeches delivered or declarations made 'Anything done" must be some act done and ... ritten" ...n and ...5 I. C.

...fficient ...1933

S 11

——sec 11 deals with relevant facts It applies only to criminal case where the question is whether a fact is relevant and not whether a particular method of proof is admissible under any provision of the Evi. Act 1935 Pat 167 14 Pat 461 **F B**

——there is a difference between the existence of a fact and a statement as to its existence Sec 11 makes the existence of facts admissible and not statements as to such existence unless the fact of making that statement is itself a matter in issue Hence if a statement does not fall within s 32 it cannot be admissible even under s. 11 1934 All 406 1934 A L J 318 149 I C 781 **F B**

——where the accused is charged under the Arms Act for the possession of arms and for conspiracy to commit dacoity the fact of one accused showing a revolver to his companion would be relevant under s. 11 making the fact of possession of revolver highly probable 59 C. 1361 55 C L J 439 I R 1932 Cal 667 139 I C 873 33 Cr J 854 1932 Cr C 464

——*evidentiary value of newspapers containing accounts of* ...tionary movements found in the possession of accused. 1933 145 I. C. 481 1933 Cr. C 1202 1933 A. L J. 799.

S 14

——a Court has no concern with the justice or otherwise of the claim of the accused or w th the rectitude of his pol tical views, but the Court may take cognizance of the fact that he does not hold certain views 1933 All 498 1933 Cr C 833

——evidence of previous conviction is admissible not as evidence of character but as evidence to prove habit and associat on 1933 Oudh 355 1933 Cr C 976

S 15

——where the accused was charged under sec 409 I P C and pleaded *bona fide* payments to wrong persons under misapprehens ons evidence of other instances of apropriation of money was inadmissible Rule as to proof of similar acts for establ sh ng systematic conduct stated 1933 Cal 136 34 Cr L J 294 1933 Cr C 197

Ss 17 and 21

——what sec 21 makes relevant is an admission and wh le an

Cr C 421

S 24

What is confession

——it is only wl en an utterance s made with an *animus confitendi* that is would become a confess on if therefore the declaration is made neither with an intention to confess nor does it amount to an admission of facts from wh ch gu lt is d rectly deduc ble the declarat on would not amount to a confess on 38 Cr L J 648 20 N L J 103

——a statement of a man who takes particular case at every stage to show that he d d not take part in the offence does not amount to a confess on 36 Cr L J 1086 1935 Oudh 33 36 Cr L J 246

Confession must be voluntary

——where details found in a confession came out during the

the confession is not voluntary 41 C W N 183 1937 Cal 39 38 Cr L J 339

——there is no d fference between a confession recorded under s 164 Cr P C and an oral confession in the precaut on to be taken in ensuring that the confession is voluntar ly made 1935 Mad 479 36 Cr L J 1107 1935 Cr C 742 (52 C 67 F B 1925 All 627) *Ref*

——where the confess on is positively proved by the record that it was voluntary the mere fact that the accused confessed in the

S 24 Confession must be voluntary—*contd*

hope of pardon will not justify its rejection 1933 Lah 388 34 Cr. L J 598

——if a confession is not voluntary in the wider sense of the term, ... the desire to ... even outside ... 136 Cal 316 ... ier *prima facie* the confession of the accused appears to him to have been induced by threat or promise 1933 Cal 187 I R 1933 Cal 310 1933 Cr C. 233 142 I C 639 34 Cr L J 369

——*where the confession was taken at extraordinary length* throughout a considerable number of days and it described in the greatest possible detail a whole series of crimes which had been committed and it further appeared that the confession was probably induced by some threat or promise held, that the confession should not be admitted in evidence till there was a thorough inquiry that it had been voluntary 1933 Cal 835 34 Cr L J 1087 1933 Cr C. 1495 F B

——after confession was recorded the accused was tendered pardon and was examined as prosecution witness He denied knowledge of occurrence and the pardon was withdrawn but was examined as a prosecution witness in the Sessions Court where also he denied all kwowledge and made seric ...

... has always been held to import a threat or promise unless the words are qualified in some manner. 1934 Lah 417 1934 Cr C 643

Confession must be taken as a whole

——a confession must be taken as a whole 1934 Lah 673 1934 Cr C 999 1934 Lah 620 1934 Cr C. 945 1933 Rang 204 1933 Cr. C 919 1933 Lah 665 34 Cr L J 584 1933 Mad 888 1933 All 401 34 Cr L. J 765 1933 Lah 232 34 Cr L J 318

——the confession of an accused which is to be the sole basis of conviction should be taken in its entirety 34 Cr L J 584 1931 All 1 52 A 1011 32 Cr L J 362 1930 A L J 1481 F B

——the entire confession need not be rejected merely because part is found to be false 1934 Oudh 222 35 Cr L J 894

Confession must be relevant

——in considering the question of the admissibility of a confession the first thing to be considered is whether it is relevant or not. 1935 882 36 Cr L. J. 925 1935 Cr C 1046

Extra judicial confession

——every precaut on should be taken to ascertain exactly the words of an extra jud cial confession 1934 S nd 119 1934 Cr C 960

Person in authority

——there is no definition of the words person in authority but it is well settled that the words have reference to a person who has authority to interfere in the matter under inquiry Generally speaking a person in authority is one who is engaged in the apprehens on detention or prosecution of the accused or one who is empowered to exam ne h m 1933 Pat 149 142 I C 474 12 Pat 241 34 Cr L J 349 14 Pat L T 82 1933 Cr C 404 **Sp B.**

——confessio i by subord nate officer to h s superior officer hold ng out some inducement cannot be used against the former Where a post office clerk begged of h s superior to be saved if he disclosed every th ng and the latter having promised to save h m the accused made a co fess on, held that the confession was not admissible 60 C 719 1933 Cal 644 1933 Cr C 1054 34 Cr L J 1187

——whether a person who is merely the landlord of the v llage and member of the Union Board is a person in authority with n s 24 63 C 1089 63 C L J 142 37 Cr L J 676 1936 Cal 227

——the servant of a landlord of the accused may be a person in authority 1936 Lah 264 1936 Cr C 250 But see 1936 All 470 37 Cr L J 852 1936 Cr C 615

——an honorary M who is also a Ja ldar is a person in authority 1934 *Lah* 417 1934 *Cr C* 643

——Mukh s to whom confess on was made were held to be persons in authority 1934 S nd 172 1934 Cr C 1274

Retracted confession, admissibility of

——though it is not a rule of law that an accused cannot be convicted upon a confession if he has retracted it it is very necessary as a rule to make certa n before acting on it that corroborative ev dence supports the confess on 57 C L J 213 1933 Cal 747 34 Cr L J 1222 1933 Cr C 1249 **Sp B**

——

it has t
induced
38 Cr L
1934 S n

1934 Cr C 1025 1934 Oud 308 35 Cr L J 1154 1934 Oud 410 35 Cr L J 1290

——a retracted confession is of very little ev dentrary value and must be corroborated in material part culars 54 A 350 1932 All

Retracted confession admissibility of—*contd*

228 33 Cr L J 201 1932 Lah 557 33 Cr L J 935 1932 Cr C 721, 1933 S nd 313 1933 Cr C 1043

——when corroboration is sufficient 1934 Lah 150 1934 Cr C 330

——when there is no reliable evidence in corroborat on the evidence of an approver, coupled with the retracted confession of a co accused, is not sufficient for conviction 1933 All 31 34 Cr L J 489 1933 Cr C 42

——where the confession was presumably true and made voluntarily, it was admissible though retracted 55 M 717 33 Cr L J 586 1932 Cr C 504 1932 Mad 500 1933 Lah 388 34 Cr L J 598

——a retracted confession must always be most carefully scrutinised and the Court should be most cautious in relying on it 1933 Bom 230 34 Cr L J 896 1933 Cr C 653

Duty of Court

——a confession duly recorded by a Magistrate with the prescribed certificate appended to it may under s 80 be presumed to be voluntary and as such admissible but this is subject to the restrictions contained in sec 24 Evi
of probab l ty
the leg slature
C W N 659

——what question to be cons dered by the Judge 55 A 91 1933 All 31 34 Cr L J 489 1933 Cal 187 34 Cr L J 369 1933 Cr C 233

S 25

——this sec was intended to apply to Pol ce Officers alone and not to persons who are provisionally and for a limited purpose invested with some of the powers of police officers So a confession made before an Excise Inspector invested with the pol ce powers is admiss ble in evidence 1932 Pat 293 1932 Cr C 765 13 Pat L T 627 **Sp B** 36 C W N 163 1932 Cal 122 140 I C 257 I R 1932 Cal 706 but see 58 C 1200 35 C W N 601 1931 Cal 350

——the term pol ce officer has not been defined any where The term should not be read in any technical sense but in its more popular and comprehensive mean ng which connotes nothing more or less than a member of the pol ce force 1932 Pat 293 1932 Cr C 765 **Sp B** 1 C 207 *Rel on*

——a Sub divisional M cannot be taken to be a police officer 1934 Pat 256 35 Cr L J 1217

——a village chowkidar is a pol ce officer 1936 All 753 1936 Cr C 994 **F B**

——an adm ssion to the Excise Sub Inspector is inadm ssible Nag 136 35 Cr L J 1233

S. 25—*contd*

——a *Mukhia* is not a police officer 1935 All 549 36 Cr L J 636 1935 Cr C 567

— Abk Off ... ce against Bombay Abkari Act ... B 1925 Sind 70 82 I C 151 ar... *ruled*

— ... between a confession made before investigation and confession made after investigation It is a confession to a police officer made at any time which is inadmissible 1936 Lah 380 37 Cr L J 740 1936 Cr C 327

——admissibility of report by accused at police station containing *confession* *1933 Lah 899 1933 Cr C 1287*

——a confession by an accomplice to an Excise Officer is inadmissible as a piece of substantive evidence as against the other accused But when the maker is examined as a witness, the confession may be used to discredit him 61 C 967 38 C W N 1005 35 Cr L J 1178 1934 Cr C 905 1934 Cal 616

——the word 'police officer' does not exclude from its meaning Excise officers exercising powers of detention and investigation of crimes 61 C 607 38 C W N 930 59 C L J 555 1934 Cal 580 35 Cr L J 1071, **F B** *contra* 1938 Mad 460

——when a confession is retracted it becomes very unsafe to use the contents of that confession against any co accused who is undergoing joint trial But under certain circumstances the Judge can accept such confession as being a true and proper account of the necessary happenings to support the prosecution case 63 C 1053 63 C L J 232 37 Cr L J 775 1936 Cal 316

——statement of an accused made at the police station against the co accused is inadmissible and cannot be used as evidence as against the co accused 1933 Lah 167 34 Cr L J 1175 1933 Cr C 312

——investigation of one crime—confession to police of another crime is also inadmissible 1937 Mad 209 38 Cr L J 323

——statements which are not of an incriminating nature are admissible 1934 Sind 100 35 Cr L J 1332

——even if a policeman happens to be a member of a crowd of villagers and a confession was made to the villagers at large it is not inadmissible 1934 All 132 35 Cr L J 448

S 26

——a Magistrate in a Native State is an officer who would come within the definition of M in the general clauses Act s 3 (31) 1934 Sind 103 35 Cr L J 1328 1933 All 286 34 Cr L J 704 1933 Cr C 488

——when the accused made the confession to fellow prisoners while in judicial custody the presence of the police man who was in guard did not make the confession inadmissible 1934 Lah 75 35 Cr L J 1432 1934 Cr. C 142

S 26—*contd.*

——the mere fact that the Court constable was allowed to remain present when the co-accused were making their confessions before the M does not involve the total exclusion of the confession from evidence. 1934 Pat 586 1934 Cr C 1243

——when confession was made to persons who took part in the investigation the contradictory and discrepant statements made by them made the confession unreliable 1934 Lah 8 35 Cr. L J 623 1934 Cr C 21

——if a confession is made to a Magistrate himself then that confession is obviously made '*in the immediate presence of the M*" and the requirements of the sec are satisfied 1934 All 351 1934 Cr C 421

——the chowkidar is regarded as a member of the village police and therefore is a police officer 1938 Pat 308, 1932 Pat 293, *expl*, 26 C 569 *Rel on*, 1934 Oudh 19 35 Cr L J 664

... of a private ... ody of police ... if the arrest is illegal 1938 Pat 308

——statement made by the accused to the daroga showing the place in the jungle where the occurence took place, cannot be admitted in evidence as this confession is made to a police officer while in custody. 1933 Cal 146 1933 Cr C 223 34 Cr L J 638

——there is nothing in s 26 that limits its operation to Magistrates specially empowered under s 164 Cr P C 1937 Sind 212 38 Cr L J 968

——an oral confession made before an Honorary M is admissible under s 26 even though it has not been recorded according to sec 164 Cr P C. 1933 Lah 956 1933 Cr C 1411

——an oral confession made to a M soon after the arrest when the ... pon the ... 513 ... police ... to what ... r L J ... Cr C 66

S 27.

——this sec permits as much information to be admitted in evidence "as relates distinctly to the facts thereby discovered' If a fact has *been previously discovered by the police, the sec would not apply.* 1934 Lah 786 1934 Cr C 1121.

S. 27—*contd*

——this sec does not operate to make admissible in evidence a confession which would be otherwise irrelevant under s 24 It would make admissible that part of the confession in consequence of wh ch a

[illegible]

——s 27 is not merely a proviso to sec 26 but it cuts down the operation of ss 24 and 25 as well A statement made to the pol ce by

m ssible
59 C
W N
286
2 Bom
W N

[illegible]

——self accusation made to a police officer when in police custody falls under this sec 1933 Pat 149 1933 Cr C 404 12 Pat 241 I R 1933 Pat 139 142 I C 474 34 Cr L J 349 **Sp B**

——where the pol ce officer arrested the accused for being in possession of cocaine after the find ng of cocaine with him and followed the accused to a place where the accused pointed out the spot where the cocaine m ght be found held that the accused was in police custody and his statement was inadmiss ble 1933 Cal 148 1933 Cr C 225

——in regard to statements made by accused persons the Cr P Code does not in s 162 alter the provis ons of sec 27 Evi Act There is no contradiction between the two sect ons as sec 162 does not apply to statements by accused persons 1933 All 440 1933 Cr C 746

——the whole of the statement wh ch leads to the d scovery of the stolen property is admissible 1936 Nag 200 37 Cr L J 1047 1936 Cr C 814

——mere point ng out a house of a complainant by the accused charged with theft is neither an information nor a statement incrimi nating or otherwise admiss ble under s 27 1937 Sind 251 31 S L R 494

——where there is a charge of murder against three persons and a confessional statement is made by one to the police lead ng to d scovery of fact and material object held that the so much of the staten ent as was admiss ble in evidance against the accused could be taken into consideration as against his associate under s 30 Evi Act 38 Cr L J 1027 1937 Mad 618 **F B**

——where any incrim nating object is proved to have been found as the d rect result of information given by a person accused of any offence in the custody of the police officer that portion of the informa-

S 27—*contd*

be proved, provided
rmation provable is
18 F. B.
agistrate is admissi-
J 632 I. R. 1932

Lah. 504 138 I. C. 497

——where three accused one after the other said to the Sub-Inspector that some of the stolen properties were at particular places and some of them were later on discovered, the first accused was the

presence with the police under some restraint amounts to 'custody". 1937 Lah 620 38 Cr L J 1082

——statements made by an accused person which are or may be provable under s 27 should be clearly and carefully recorded by the police officer concerned They should be recorded in the first person, that is to say as far as possible in the words of the accused. 1937 Mad. 618 38 Cr L J 1027 **F B.**

——where a person had been suspected from the beginning itself and was treated as accused person and was not kept under much restraint as he could hardly have absconded, held, that he was in custody of police and statements leading to discovery of things were admissible. 1934 Lah 150 1934 Cr C 330

——even where the accused is the first person to inform the police Sub-Inspector about the presence of a dead body in the well, it cannot be said that the body was discovered in consequence of the information where the body was really discovered by some one else before the statement of the accused though not to the knowledge of the police 1934 Lah. 313 1934 Cr C. 545.

——confessions made by the accused were rendered admissible in law because they led to the discovery of a relevant fact 1935 Mad. 528 36 Cr L J 1442 58 Mad 642 **F B**

S 29

——a voluntary confession does not become inadmissible simply because the accused was not warned by the Magistrate that he was not bound to make such confession S 164 Cr P C. is in conflict with s. 29 Evi. Act, in this respect and the latter will prevail 55 M 711 · 1932 Mad. 431 1932 Cr C 412 33 Cr L J. 526, 31 A 592 **F B**, 1933 Oudh 404 1933 Cr. C 1277

S. 30.

——a statement of the co-accused before the Court, when it de cates his own guilt, is a statement seeking to clear himself at the ex

S 30—*contd*

1934 Cal 724
J 201
than the sworn
d independently
both as the crime and as to the criminal, and when that confession is retracted it has no value at all as against the accused 39 C W N 27 1934 Cal 853 1934 Cr C 1368 1934 Pat 586 1934 Cr C 1243 1934 Rang 30 35 Cr L J 863 1934 Lah 718 1934 Oudh 418 35 Cr L J 1290

conviction cannot be based on
J 1180
Act is, that the Court can only
other evidence against a co
accused A conviction however on the confession of a co accused alone would be bad in law 1937 Cal 433 38 Cr L J 852 **Sp B** 38 C 559 *fol*

——it is a fallacy to say that the confession of a co accused can be dealt with on the same basis as the evidence of an accomplice 1937 Bom 31 38 Bom L R 1122

——when in a joint trial of two persons one dies after making a confession it can be used against the other as corroborat ve ev dence
ot
on
he
confessio i can iot be supported 41 C W N 183 38 Cr L J 339 1937 Cal 39

——in considering the question whether the confession of the co accused who pleaded gu lty can be used against the other co accused a distinction must be made between summons and warrant cases on the one hand and Sessions cases on the other 1937 Nag 17 38 Cr L J 237, **F B**

——the confession of a co accused stands even on a lower footing than that of the ev dence of an accompl ce as it is not a statement on oath and cannot be tested by cross examinat on and it cannot therefore be accepted without material corroboration 1933 Lah 956 1933 Cr C 1411, (4C 483 43 B 739) *Ref* 36 Cr L J 1037

——the evidence of an approver may be corroborated by the *confession of a person who is being tried jointly with the accused for the* same offence implicating both himself and the accused 1933 Rang 57 34 Cr L J 286

——the statement of an accused made at the pol ce station against the co-accused is inadmissible and cannot be used as evidence as aga nst the co accused 1933 Lah 167 34 Cr L J 1175

——the retracted confession of an accused has really little or no evident *ary value against a co accused but it may be taken into consi*deration along with other evidence 1935 Oudh 354 36 Cr L J 767

S 30—*contd*

——where there is no other evidence to show that any portion of the exculpatory element in the confession is false the Court must either accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently incredible. 1932 Lah 438 1932 Cr C 584, 52 A 1011 *fol*

——it is always desirable to pass a sentence completely before calling upon an accused pleading guilty in a joint trial to give evidence against his co-accused 58 C 1214 35 C W N 490 1931 Cal. 341. 32 Cr. L. J. 667 131 I. C. 142 1931 Cr C. 405.

——when certain persons are being tried jointly for the same

[illegible]

1925 Nag. *Dist*) 1932 All 228 *Expl* , 1929 Pat 275 *Ref*.

——when two persons are tried at the same trial one for rape and the other for abduction of the same girl, confession by former admitting his own guilt and implicating latter in abduction, is not admissible in evidence under s 30, Evi Act. 42 C W. N. 814

S 31.

——the expression "police custody" does not necessarily mean formal arrest It also includes some form of police surveillance and restriction on the movements of persons concerned by the police 1932 Lah 609 33 Cr. L. J. 756 I R. 1932 Lah. 578 139 I C 429.

S. 32

——the necessity of recording a dying declaration arises only when the hopes of life of the man are given up 52 C. L J 425 129 I C 676 32 Cr. L. J 416

——the dying declaration is admissible where the cause of death comes into question 32 Cr L J 1118 I R 1931 Lah 885 134 I. C. 117

——but the motive cannot be proved by hearsay evidence, by the testimony of a witness who heard the deceased make the statement 54 M 931 134 I C 1143 1931 M W N 1177 1931 Cr C 923 1931 Mad. 689.

——the first information report containing the dying declaration is admissible in evidence under sec 32 (1) 1931 Lah 113 1931 Cr. C. 167.

——once a declaration falls under sec 32, it becomes relevant evidence and the Court must Judge of the weight of that evidence

S 32—*contd*

the-

not
he
presence of the accused come
reliable corroboration

——in a trial for ath
regarding the circumstances of robbery is relevant under s 32 (1) even though death was caused remotely by the wounds received at robbery 1935 Rang 418 1935 Cr C 1205

1933 Cr C 780

——statements made by the deceased long before the actual *incident of murder are inadmissible under s 32 (1)* *1933 Nag 136* 34 Cr L J 505

——statements by deceased as to the cause of his death are admissible, not only as against the person who actually caused the death of the deponent but also against other persons concerned in the transaction which resulted in death 1936 Rang 187 37 Cr L J 621

——a dying declaration which comes under sec 32 (1) should not piece of evidence Merely it does not follow that the discarded and disbelieved C 1129

——it is not safe to base a conviction on a dying declaration when the other evidence is tainted and has been rejected 1934 Oudh 405 *35 Cr L J 1113*

mmit the offence ev dence about of the witness efore the murder took place as to the proposal of the accused to such witness to murder the deceased was sought to be proved held that the statement could hardly come within s 32 (1) 1938 Cal 125 (25 B 45 1924 Lah 253) *Rel on*

——statements regarding motive of the accused to commit the offence made by the deceased in his first information report and dying declaration are admissible under s 3 as circumstances of the transaction which resulted in the death of the deceased 1938 Pat 52, 1931 Mad 689 *Dist*

——the law is not that the written record of a dying declaration cannot be used at all, but that it is not to be used without first examining as a witness the person who heard the statement made Where the M.

S. 32—*contd*

who recorded the dying declaration proved that the deceased was in his senses and deposed that he read over the statement to the deceased who admitted it to be correct, held, that this was sufficient attestation and proof of the statement 1938 Pat 52, 1922 Cal 382 *Rel on*

——the receipt of forty-two gunshot wounds in the liver heart, stomach and lungs and profuse hæmorrhage occasioned thereby would cause a great deal of shock and the probability is that the victim becomes unconscious within a few minutes incapable of making any

leclara-
dying
merely
el on
quently
solemn

proceeding Unauthorised persons should not be permitted to crowd round when the declaration is being made Duty of the Magistrate discussed 1934 All 908 1934 Cr C 1167

——usually a dying declaration which records the very words of the dying man unassisted by interested persons is most valuable evidence but the value of a dying declaration altogether disappears when parts of it have obviously been supplied to the dying man by others 1934 Lah 805 1934 Cr C 1126

——the expression 'statement made in the ordinary course of business in s 32 (2) means a statement made during the course not of any particular transaction of an exceptional kind but of business or professional employment in which the deceased was ordinarily or habitually engaged 1938 Cal 150 (23 B 63 13 C W N 71 16 C W N 252) *Rel on*

S 33

——an inquiry before the Coroner although it may be judicial proceeding is not a proceeding betweeen the prosecutor and the accused and therefore the deposition of a witness taken in an inquiry before the Coroner cannot in the event of the death of the witness be taken into account at the trial before the H C 1933 Bom 479 1933 Cr C 1553

——in cases of sexual matters it is dangerous to convict upon the evidence of the woman who makes the charge without corroboration by independent evidence The statement of a witness that he saw
weeping may be relied

54 M 678 60 M L J
1931 Mad 430

——the deposition of a witness who died and whom the had an opportunity to cross examine in the previous trial is admiss in a *de novo* trial 1932 Mad 559 139 I C 203 I R 1932 641 32 Cr L J 738 1932 M W N 857

S. 33—*contd*

——the sec. does not require that the adverse party should have actually exercised his right to cross-examine, it is enough if he had the opportunity to cross-examine on the occasion. 1934 Pat 413, 8 C W. N 838 *Ref.* If there was no opportunity to cross examine, the deposition is not admissible. 1934 Mad. 100 150 I. C. 132.

——the statement made by a person before a committing M. can be transferred to the record of the S J only if the person is examined as a witness before the S J. The statement will be admissible under sec. 33 only if the Judge holds that the witness was incapable of giving evidence before him. 1934 Lah 212 35 Cr. L J. 349. 1934 Cr C. 447

——where in a case under s. 366 I. P. C the witness who was examined in the committing Court to prove the horoscope did not appear before the S J. and it was alleged that he did not get the summons, the S. J was right in refusing to admit the evidence. 1934 Cal. 766.

——the Court is justified in treating the evidence of any witness under s 33 when it is found impossible to produce him for further cross-examination. 1935 Rang. 484: 1935 Cr C. 1258, 6A. 224, 1935 Nag 8 36 Cr L. J. 578

——the person who is called by proviso (1) a "representative in interest" of another is a person who was a party to the first proceedings. 1933 P C. 202 58 Cr L J. 305 38 C. W. N 1 P. C

S. 45

——the value of the expert evidence depends largely on the cogeney of the reasons on which it is based In general it cannot be the basis of conviction unless it is corroborated by other evidence. 1936 All 165 37 Cr. L. J 263.

——it is going too far tosay that the Court must insist upon corroboration of a finger-print expert. On the other hand the Court should be careful not to delegate its authority to a third party, and the Court must satisfy itself as to the guilt 1936 Bom 151 60 B 187 37 Cr. L. J. 539

——it is quite clear that the science, if it could be so called, of foot-prints has not yet progressed very far. But the evidence of the expert is admitted as circumstantial evidence It is not the opinion of the expert that is of any importance but the facts that the expert has noticed. He is better qualified to notice points of similarity or dissimilarity than one who has made no study of the prints 1937 Mad. 951.

——the comparison of handwriting is something hazardous and inconclusive, and should be made with care and caution The Court has to examine the opinion and come to its own decision. The most important things are to examine the general characteristics, formation of letters, fixed penhabits and mannerisms and to discern the identity of the writer The identity or resemblance in handwriting has to be

S 45—*contd*

found out on the value of the effect of various considerations arising from individual characteristics and idiosyncracis which have been embodied in technical language of experts 1937 Cal 99 38 Cr L J 818 **Sp B**

——an expert witness however impartial he may wish to be is l kely to be unconsciously prejudiced in favour of the side which calls him Besides it must be remembered that an expert is often called by one side simply and solely because it has been ascertained that he holds views favourable to its interests 1933 Lah 561 34 Cr L. J 735

——depos tions of expert witnesses as to the result of their opinions and as to the effect of them do not come within the domain of expert evidence at all 1933 P C 26 142 I C 815, **P C**

——where the expert is not examined and the other party has had no opportunity of cross examining him the report of the expert cannot be adm tted in evidence 1933 Pat 159 141 I C 767, 1935 All 142

——the opinion of an expert to the effect that one document has been type written on the same machine as another document is not admissible under this sec 1933 All 690 1933 A L J 799 145 I C 481 *1933 Cr C 1201*

——where several experts give evidence and there are contradic tory evidences the evidences can carry little weight 1933 Lah 885 144 I C 497

S 73

——s 73 means that where the accused is in Court the Judge presiding in that Court may then and there ask him to write something for the purpose of comparing his writing with some other writing and that the procedure of delegating to another Magistrate not sitting as a Court to take such writing from the accused when the accused is not in Court nor standing his trial in Court does not come within the provisions of the section 39 C W N 986 1935 Cal 308 6 Cr L J 921

——*(per Lord Williams J)*—there is considerable doubt as to whether s 73 refers to an accused person at all 1927 Cal 17 *Ref (per Jack J)* s 73 includes an accused person 1924 Rang 115 1932 Bom 406 *Rel on* 1935 Cal 308 39 C W N 986 36 Cr L J 921

S 74

——the *Rosnamcha* of a police stat on house where a complainant gives information of an offence which contains the report of an offence is not a public document 18 N L J 333

——a letter to the Collector forwarding the proceedings of a pu i meeting is inadmissible as it is not a public document 1933 Cal 31 143 I C 367

S 74—*contd.*

——certified copies of confessions by accused would be admissible as evidence to prove the act of the M. recording the confession. 1933 A. L J 1551 **F. B.**

S 80.

——when the confessions are recorded strictly in accordance with law, the usual presumption arises under the provisions of sec. 80 Evi Act, that the confessions are voluntarily made 1935 Rang 491 1935 Cr. C 1266

[illegible]

Cal 636

——depositions are matters required by law to be reduced to the form of a document within the meaning of sec 91 and the only way they can be proved is under s 80 and this is only when they are taken in accordance with law 1933 Cal 190 34 Cr L. J 430 1933 Cr C 236

——a dying declaration before a Magistrate and recorded by him is "evidence" and can be admitted without proof. 1931 All 340 1934 Cr C 418.

S 105

——*it is for the accused to prove the facts essential for the purpose* of bringing his case within any of the exceptions 1933 Rang 142 34 Cr L J 783

——the phrase "burden of proof" is used in two distinct meanings in the Evidence Act, *viz*, the burden of establishing a case and the burden of introducing evidence In a criminal trial the burden of proving everything essential to the establishment of the charge against the accused lies upon the prosecution and that burden never changes [illegible] used [illegible] roduce [illegible] rcum- [illegible] id will suffice to satisfy the Court that such circumstances may have existed 1937 Rang 83 38 Cr L J. 524 **F. B**, 1936 O W. N. 1013 37 Cr L. J 1130.

——the decision of the House of Lords in *Woolmington, vs.* [illegible]

reasonable grounds for holding that the case falls within an exception.

S 105—*contd*

the presumption enacted in the last line of sec 105 does not arise at all 1937 Rang 83 38 Cr L J 524 F B

——the mere fact that the defence theory is rejected will not prove the guilt of the accused 1934 Oudh 485 35 Cr L J 1489

——where on a charge of murder the accused chooses to plead the right of private defence of person and property, the burden of proving the existence of circumstances bringing his case within one of the several exceptions must lie upon him and under s 105 Evi Act the Court is bound to presume the absence of such circumstances 1935 Oudh 281 : 36 Cr L J 534

——where a person accused of an offence pleads insanity the burden of proof that he was of unsound mind at the time of committing the offence charged lies heavily upon him 1935 Oudh 143 36 Cr. L J 392

Mad 656

S 114

——the presumption and inference are two different things and should not be confused with each other 62 C 956 39 C W N 620

——when a party is ordered by the Court to reappear and submit to further cross examination on a certain point but he never cares to re enter into the witness box and deliberately keeps away, the Court is justified in drawing an inference unfavourable to his case 1937 Cal 129 64 Cr L J 280

——s 114 includes but is not limited to the presumption of regularity 1936 Cal 1 160 I C 332

——conflicting presumptions neutralise each other and leave the case at large to be determined solely on the evidence given 38 C W N 861

——the Rule of evidence is in favour of presuming the continuity of *things shown to exist at a prior date There is no rule of evidence* by which one can presume backwards 38 C W N 763 1934 Cal 707

——the effect of sec 114 is to make it perfectly clear that Courts of justice are to use their own common sense and experience in judging the effect of particular facts and they are to be subjected to no technical rules whatever on the subject 1934 Cal 719 35 Cr L J 1335 F B

——if an article stained with human blood is recovered from the possession of, or a place pointed out by the accused the case against him becomes very strong and he has to explain away that point But prosecution must prove that the stains on the articles are stains of hu blood 1934 Oudh 388 35 Cr. L. J 1154

Ill. (a)

——where a person is found in possession of stolen property shortly after it was stolen the Court may presume but not invariably that he is a thief 1934 All. 455 35 Cr L J 1092, 1933 Oudh 117 · 34 Cr. L. J 649

——mere physical relation arising from the possession of the object is insufficient to amount to possession which connotes control over the object possessed The possession of the stolen property should be exclusive as well as recent 1934 Rang 80 35 Cr L. J. 994 1934 Cr. C 512

——in order to draw the presumption under Ill (a) the accused

... that he ... ves any ... ılt of the ... 7 1931 ... 1931

... owledge of dacoity or dacoits merely from the fact of possession of recently stolen goods 62 C 956 39 C W N 620

The most that can be said is that it is suspicious 1935 Cal 000 36 Cr. L. J. 1466

——prosecution under s 401 I P C —stolen property found in possession of various accused after six months but there were signs pointing to their association in crime—there was presumption that the articles were stolen property 1937 Nag 17 38 Cr L J. 237 F B.

——the Court need not rely on the presumption if the acts do not warrant it 1937 Lah 700 38 Cr. L. J. 1066

Ill (b)

——Ill (b) provides that the Court may presume that an accomplice *is unworthy of credit unless he is corroborated in material particulars* and the material particulars must implicate the accused in order that the corroboration may be such as is intended by the sec 1934 Cal 114 35 Cr. L. J. 551

Ill (b)—*contd*

—— t is the salutary rule that the evidence of an accompl ce or approver should be corroborated The question whether tl e ev dence of an approver or accompl ce has been suffic ently corroborated is however largely a matter for the try ng Court 39 C W N 754 1934 Lah 346 35 Cr L J 1046 1936 Lah 400 37 Cr L J 597 1936 All 337 37 Cr L J 794

——there is no hard and fast rule that a conv ction cannot be supported wh ch proceeds on the uncorroborated testimony of an accompl c• 34 Cr L J 421 142 I C 809 1933 Pat 96 13 Pat L T 802 1933 Pat 500

—— t is unsafe to conv ct a person on the uncorroborated testimony of an approver who is no better than the ord nary run of such men 1932 Lah 204 1932 Cr C 248 1932 Cal 377 33 Cr L J 357 1932 Cr C 320 1937 S nd 162 38 Cr L J 808

—— t has been held in some cases that it is not illegal to base a conv ction on the uncorroborated test mony of an accompl ce or upon such test mony if it is corroborated by other accompl ce ev dence But that is not tantament to say ng that ndependent corroborat on is not necessary or that the corroboration of one tainted evidence by another tainted evidence is independent corroborat on 39 C W N 761 62 C 819 1933 Pat 500

—— t is wholly unsafe n a case to proceed solely upon the uncorroborated test mony of an accompl ce The secs 133 and 114

1937 Cal 433 38 Cr L J 852 **Sp B** 1937 Rang 264 38 Cr L J 948 1937 Rang 209 38 Cr L J 785 38 C W N 777 1934 Cal 678 35 Cr L J 1357 1936 Oudh 156 37 Cr L J 163 40 C W N 1164 1936 Cr C 757 1936 P C 242 37 Cr L J 914 **P C**

—— n a prosecut on for an offence under sec 377 I P C the compla nant a boy vho s found to have been w ll ng party must be regarded as an accompl ce and t s not therefore safe to conv ct the accused on the ev dence of the compla nant boy unless the ev dence s corroborated n mater al part culars 39 C W N 1051 61 C L J 583

——the rule requ ri g corroborat on appl es with very l ttle force to

400 1935 [illegible]

—— n a case of cr m nal consp racy corroborat on of the approver' evidence is absolutely necessary 1935 All 162 36 Cr L J 684

III. (b)—*contd*

——in a charge of murder, the fact that the deceased was last seen alive in the company of the accused and the approver, is a strong circumstance which corroborates the testimony of the approver 36 Cr L J 1202 37 P. L R 271

——an approver may be corroborated by the confession of a person who is being tried jointly with the accused for the same offence implicating both himself and the accused 1937 Rang 218 38 Cr L J 774 This principle applies even where both the approver and the confessor subsequently retract their statements 1937 Rang 116 38 Cr L J 705

——an approver *does not corroborate himself* A previous statement of an approver is no corroboration of a later statement by the same approver 1937 Sind 221 38 Cr L J 995

——there is nothing in law to justify the proposition that the [illegible]

——the evidence of a person who has seen a murder committed but does not give any information thereof may or may not be better than that of an accomplice but the truth of the story told by him is not above suspicion 1934 Oudh 315 35 Cr L J 836

——it must be remembered that all persons coming technically [illegible] precisely on the [illegible]

[illegible] as been unconditionally withdrawn is a more reliable witness than the accomplice who is examined under conditional pardon though in both the cases proper corroboration is necessary 1933 Cal 148 1933 Cr C 225 34 Cr L J 675

——the evidence of an accessory must be corroborated in some material particular not only bearing upon the facts of the crime but upon the accused's implication in it Evinence of one accomplice is not [illegible] a rule of [illegible] nportance in [illegible] or two of [illegible] upon other [illegible] 1.36 Cr C. 757. P C

——the evidence of an accessory after a crime suffers more or less from the same taint as the evidence given by an accomplice 1937 Oudh 250 38 Cr L J 296

——Indian law does not recognise any such thing as an accessory after the fact A man who does not abet a crime cannot be regarded as an accomplice Although a person who assists in disposal of the

Ill. (b)—*contd.*

dead body may become liable to punishment under s 201 I P. C., this is quite another offence, and helping to dispose of the body of murdered man, without having taken any part in the murder itself, does not make a man accomplice with regard to the murder 1937 Rang. 513.

——when an accomplice is coerced and threatened into submission to commit an offence, he is not a criminal of the basest kind The corroboration necessary to establish his credit will be less than if his complicity in the offence had been voluntary and spontaneous 1934 Sind 78 35 Cr. L J. 1170

——in order that there may be corroboration of the accomplice's evidence the material particulars must implicate the accused. 37 C W N. 934

——the corroboration must consist of some circumstances that affects the identity of the accused 35 C W N 1270 1931 Cal 697 134 I C 1121 1931 Cr C 977

——the rule as to corroboration of approver's evidence is equally applicable in a case where there are more than one accomplice and even though the charge may be difficult of proof 35 C. W N 1270 1931 Cal. 697 134 I. C. 1121 1931 Cr. C. 977

——the testimony of the wife of the approver is not good corroborative evidence as she is interested in her husband s pardon 33 P L R 13

——the wife of a murderd man who knew all about the proposal to murder her husband and was a consenting party to the commission of the crime is in the position of an accomplice 1934 Lah. 171 1934 Cr. C 349, 1936 Lah 731 37 Cr L J 978

——retracted confession must be corroborated by independent evidence and not by the evidence of an accomplice. 36 C W. N. 874, 1933 All 31 143 I C. 67 1933 Cr C 42, 1933 Rang 73

——a retracted confession may be good corroborative evidence against the person who made it, though not against the other co-accused. 1932 Lah 180 33 Cr L J. 414 1932 Cr. C. 179, 1933 Rang 320 1933 Cr. C 1139

——a retracted confession may be used to corroborate an approver

Ill (d)

——a revolver stolen in October was found with the accused in the following May, held, that though the distance of time was not short, yet as the accused could not account for the possession of the article the Court was entitled to presume that the accused was either a thief or retainer of stolen goods 1933 All 461 34 Cr L J 1018 1933 Cr C. 761

S 126—*contd*

——where there is no allegation that so long as his employment continued the pleader observed any fact showing that an offence or fraud had been committed but the offence or fraud f any hav ng been comm tted after his employment ceased the Proviso 2 does not come into play 1933 S nd 47 34 Cr L J 562 1933 Cr C 173

S 133

comm tted they are not accompl ces 1936 Cal 101 63 C L J 191 37 Cr L J 445

——a w tness who happens to be cognizant of a crime or who

35 Cr L J 1357 38 C W N 777

——insp te of s 133 the rule of practice that an accused person ought not to be conv cted on the uncorroborated test mony of an accompl ce has become v rtually equ valent to a rule of law But that propos tion is subject to various qual fications and it cannot be held

corroborate

35 Cal 513

ivy Counc l

oborat ve of

another The rule though a rule of prat ce is now v rtually a rule of law 40 C W N 1164 1936 P C 242 37 Cr L J 914 1936 Cr C 757 **P C** See also 1937 Cal 433 38 Cr L J 852 **Sp B** 38 C W N 777 35 Cr I J 1357 1934 Cal 678

——where the first statement requ red corroboration from an independent source such corroboration could not be sought in the

Corrobora

corroboration

borated at all

on the first

34 Cr L J

638 1933 Cr C 223

——corroboration must proceed from source extraneous to person whose test mony it is sought to corroborate 1938 Rang 177 **F B** 1937 Rang 209 *overruled*

——the evidence of an accompl ce must always be received w th the greatest possible caution and if there is any fear in the w tness s

S. 133—*contd.*

... prosecution will result in ... ruthful evidence being ... 1935 Cal 473 36 Cr L J 1440 1935 Cr C 605

... accomplice is unworthy of credit, unless he is corroborated in material particulars and the material particulars must implicate the accused in order that the corroboration may be such as is intended by the sec 1934 Cal 114 35 Cr L J 551 1934 Cr C 165

——an accomplice includes one who poses as an accomplice and his evidence requires corroboration 1932 Cal 295 I R 1932 Cal 336 137 I C 497 1932 Cr C 264 33 Cr L J 477

——the testimony of the wife of the approver is not sufficient corroboration 33 P L R 13

——evidence of an accompl ce should not be accepted without material corroboration 137 I C 170 1932 Cal 377 33 Cr L J 357 I R 1932 Cal 273 1932 Cr C 320 54 M 931 134 I C 1143 1931 M W N 1177 1931 Mad 689 and the corroboration must come from independent witnesses and not from the tainted evidence of an accomplice 36 C W N 874 140 I C. 379 I R 1932 Cal 709 1933 Cal 146 1933 Cr C 223.

——the Judge is to point out to the jury the position in law affecting the evidence of an accomplice and to tell them that they may convict if they choose on his evidence alone 37 C W N 934

——there is no bar to the conviction of an accused person even on the uncorroborated testimony of an approver if the Court is fully satisfied as to its truth 1931 Lab 178 32 Cr L J 684 1931 Cr C 298, but it is not safe 54 M 931 134 I C 1143 1931 Cr C 929 1931 Mad 689

See other cases under sec 114 Ill (b)

S 135

——where the witnesses are not summoned at the instance of the accused for cross examination, but are summoned for examination in *de novo* trial, the order in which these witnesses are to be examined in chief rests at the discretion of the prosecution 1934 Nag 209 ... Cr C 980

——where the prosecution witnesses as well as the ... were present in Court and the accused for certain reasons of his wanted to cross examine the witnesses before the complainant

S. 135—*contd*

Court insisted on the complainant being examined first, held that the M. should have acceded to the request of the accused. 37 C. W. N 288 1933 Cr. C 235 1933 Cal. 189 34 Cr. L. J. 347.

S. 137.

——no general rule can be laid down in respect of unfinished testimony If it is substantially complete and the witness is prevented by sickness or death or other causes (mentioned in s 33) from finishing his testimony it ought not to be rejected entirely But if not so advanced as to be substantially complete it must be rejected 1933 Lah. 561 · 34 Cr L. J. 735

S 145.

——the provisions of sec 145 relate to cross-examination as to previous statements in writing but does not militate in any way against such previous statements being used by way of corroboration of statements put in under sec 288 Cr. P C. which are substantive evidence in the case before the Court of Sessions 37 C. W N. 1066 58 C. L J 66

——a statement made by a witness to the police in an investigation under sec 162 Cr P C, cannot be used during an inquiry or trial in order to show that while giving evidence the witness has made assertions which he did not make when he was examined by the police The statement may be used in the manner laid down by s 145 Evi Act, only to show that the witness is contradicting something he has said before 56 M. 475 1933 Mad 372 34 Cr L J 582

——where, when a witness's statement differed from his statement to the Magistrate the method adopted was to call the attention of the witness to the discrepancy between the two statements and then to exhibit the deposition recorded by the M to prove the discrepancy, the procedure was held to be in accordance with s 145 1933 Pat 589 1933 Cr C 1350

——a headman cannot examine witnesses on oath in the course of an inquiry in a criminal case The statement made to headman can only be used in the manner provided for in ss. 145 and 157 Evi Act 1933 Rang 119 34 Cr L J 781

——what is intended by s 145 is that a witness should be informed of the part of his statement which is to be used to contradict him and he should be given an opportunity of explaining what he meant by that portion of his statement. Procedure to be adopted. 1934 All. 956 1934 Cr. C. 1258.

S 154.

——the discretion allowed by sec 154 should not be exercised without sufficient reason, because by offering a witness, a party is held to recommend him as worthy of evidence 1934 Pat 533 1934 Cr. C. 1189

S 154—*contd*

——the mere fact that a witness before the Sessions Court makes statements relating to a part of the prosecution case different from that made by him before the committing M does not necessarily make him a hostile witness 61 C 399 38 C W N. 659 1934 Cal 636 35 Cr L J 1479

——it is impossible to expect direct evidence that a witness has been won over but where he makes a statement in favour of the accused directly contrary to a previous statement against the accused it may be reasonably inferred that he has been won over 1933 Nag 384 1933 Cr C 1577

——permission to cross examination is discretionary The mischief begins when the grant of permission itself is considered to be equivalent to an adjudication or to an expression of opinion by the Court adverse to the veracity of the witness instead of being treated merely as a permission to test his veracity 1933 Pat 488 34 Cr L J 892 1933 Cr C 1030

——sec 154 in no way fetters the discret on of the Court to permit leading questions to be put by a party to his own witnesses The Court has unfettered discretion to allow the prosecutor to cross examine his witnesses after declaring them hostile 1937 Pat 34 38 Cr L J 271

——a witness can be contradicted by his previous statements but

——that a witness s answer to certain question is in direct conflict w th tl e evidence of other prosecution witnesses can never be a reason for allowing a witness to be treated as hostile 59 M 904 1936 Mad 516 37 Cr L J 909

——before a party calling a witness can cross examine him it is not necessary that the witness should first of all be declared hostile 56 M 7 1933 Mad 137 144 I C 629

——it is unreasonable that good or bad faith of a witness instead of being judged by the test of cross examination should be held to be prejudged by the mere fact that cross examination is permitted 1933 Pat 517 14 Pat L T 494 1933 Cr C 1166

——the evidence of a witness treated as hostile need not be rejected either so far as it is in favour of the party calling the witness or so far as it is in favour of the opposite party 58 C 1404 35 C W N 731 131 I C 575 1931 Cr C 497 32 Cr L J 768 1931 Cal 401 C L J 427 F B, 56 M 7 1933 Mad 137

S 155.

——sec 162 (1) Cr P C modifies sec 155 So far as the sec. permits the prosecution to impeach the credit of his own by proof of a former statement made to an investigating offi

S. 155—contd

inconsistent with the testimony of the witness given at the trial it is by implication repealed by sec 162 (1) 1933 Pat 589 : 1933 Cr C. 1350

——a confession by an accomplice to an Excise Officer is in- [illegible] dence ag [illegible] nst the other accused [illegible] tion [illegible] arate [illegible] the [illegible] it is [illegible] later [illegible] r. L J 1178

[illegible] witness in [illegible] statement [illegible] explain it

[illegible] nd explicit provisions of sec 145 and in fact takes for granted the existence and binding effect of those provisions 1931 Lal, 38 I R. 1931 Lah. 282 130 I C 410 32 Cr. L J 522 1931 Cr. C. 102

S 157.

——s 162 (1) Cr P C by implication repeals s 157 I vi Act so far as it concerns statements made by a police officer in the course [illegible] Pat [illegible] 1933 Pat 580 1933 Cr. C 1350 [illegible] in the course of [illegible] de to headman can [illegible] 145 and 157. 1933 Rang. 119 34 Cr. L J 781

——the first information report can be used only to corroborate or contradict the testimony of the witness who made it It is inadmissible as a piece of positive evidence directly supporting the prosecution 1936 Lah 833 37 Cr L J 1079

——the words "former statement" in s 157 mean a previous statement of the witness who is to be corroborated made on another occasion, i e, an occasion other than that at which the subsequent statement requiring corroboration is made. 1938 Cal. 125

S. 158

—— [illegible] to supplement the first informa [illegible] ferred to under sec. 158 and [illegible] that a copy of such a list had been give to the police would not affect the admissibility of the informant's list 1933 Lah 987 · 1933 Cr. C. 1503

S 159

——where during the police investigation in the presence of a Magistrate, the accused points out the places alleged to be connected

S 159—*contd.*

with the crime and makes admissions which do not lead to the discovery of any fact and the M does not record the admissions in accordance with the provisions of sec. 164 Cr. P C but makes a memorandum of

902 F B

——the practice of referring to statements in the first information reports medico legal reports etc as if they were evidence is not justified by law The proper course is for witness to refer to the document under s 159 Evi Act and to state in Court everything which the prosecution or counsel for defence or the trying Court considers material Hence any thing in such report not sworn to by the witness in Court cannot be referred to by the Judge 1937 Lah 475 38 Cr L J 869

——reference by witness to dying declaration Application of secs 159 and 160 54 M 678 1931 Mad 430 1931 Cr C 478 1931 M W N 167

S 164

——failure of the accused to produce certain documents for the inspection of the complainant does not deprive him of the right to use those documents as material for his defence or to put them to the complainant in cross-examination 36 C W N 1127

S 165

——the power under this sec should not be used for the purpose of eliciting what the law expressly and deliberately forbids being admitted 1932 M W N 625

under this sec for the of the law i e s 162 R 1931 Cal 543 32

S 167

——where a trial Court convicts an accused on the evidence part of which has been wrongly admitted and the Sessions Court excludes that evidence but upholds the conviction on other evidence and the trial takes a course substantially different from that contemplated b aw, the case is outside the purview of sec 167 1933 Cal 136 I. Cal 250 1933 Cr C 197 34 Cr L J 294

——improper admission of evidence of character of th which has influenced the Magistrate's consideration of other in the case vitiates the trial 1931 Pat 345 32 Cr L. J 1931 Pat 369 12 Pat L. T 471

S 34. Acts done by several persons in furtherance of common intention—*contd.*

——where two men struck another with dangerous weapons and killed him, but it was not certain whose blow resulted in death, both were guilty of murder. The fact that one committed the offence by yielding to threats of other is no mitigating circumstance 1938 Pat. 258 Sp B, 1934 Rang 98 35 Cr. L J 905, 1934 Pat 565 1934 Cr. C. 1218, 1933 Lah 315 34 Cr L. J 1051.

——when a murder is committed by one of the robbers, each and all of the robbers who had formed that common intention are liable to be convicted under sec 302 I P. C. 1935 Rang 89 36 Cr. L J 605. 1935 Cr C 264, 1935 Pesh 75 1935 Cr. C. 1454 36 Cr. L J. 958

——the word "acts" includes a series of acts and s 34 contemplates, amongst other things, a series of acts done by several persons, some perhaps by one of those persons and some by another, but all in pursuance of a common intention Where the accused who was in the company of others who had fired shots did not try to run away or even to prevent his companions doing what they did but was seen putting his hand on his waist belt where lay a dagger to wound those who were surrounding him, held that he was also guilty of the murder like his companions 39 C W. N. 199 36 Cr. L J. 1220 1935 Cal 526

——where all the accused had joined in the beating of the victim to death but it was not shown who inflicted the fatal blow, the accused might be sentenced to transportation for life instead of to death. 1932 Lah 189 33 Cr L J 457 1932 Cr C 173

——s 34 has no application to the provisions of s 397. It is necessary to find each individual accused using a deadly weapon 1931 Pat 49 32 Cr L J 476, (1924 Cal 643, 28 All. 404) *fol.* 21 A 263 *Diss from*

——the mere presence of a person at the time of the commission of an offence by his confederates is not in itself sufficient to bring his case within the purview of s 34 unless the community of design is proved against him 1934 Lah 813 1934 Cr C 1127.

——where the appellant with a number of other persons, armed

cut her accordingly, held, that the appellant took an actual part in the assault and under s 34 he was as much guilty of murder as others 1933 Rang 236 1933 Cr C. 907

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occasioned to the accused persons in their defence. 1934 Mad. 565 · 1934 Cr C 1287, 35 C. W. N 463 1931 Cal 643

S 34 Acts done by several persons in furtherance of common intention—*contd*

——where several persons were charged for offences under ss 467 and 193 read with s 34 I P C and some were acquitted and the rest were convicted under ss 467 and 193 I P C, the conviction was invalid 58 C 822 1931 Cal 625 32 Cr L J 1004 1931 Cr C 809

——sec 34 does not create a new offence but it is a rule of law and applies only when a criminal act is done by several persons of whom the [illegible]

[illegible] must be concluded from the circumstances that their intention was to [illegible]

——where there is a common intention on the part of the accused persons to beat the opposite party with *lathis* and the deceased who is a member of that party dies as a consequence of a blow struck in that beating all the accused are responsible under s 304 34 I P C 1935 All 504 36 Cr L J 549 1935 Cr C 510

——whether or not a criminal act is done by several persons in furtherance of the common intention of all is a question of fact to be determined on a consideration of the facts in each case and the common intention may be inferred from the circumstances disclosed in the evidence In such case the question of fact does not depend upon a legal presumption but upon the inference that the Court draws from the evidence 1935 Rang 89 36 Cr L J 605 1935 Cr C 264 **F B** 1935 Rang 299 36 Cr L J 1380 1933 All 528 34 Cr L J 1234 1931 Rang 1 32 Cr L J 495 **F B**

——the 'common intention' is an intention to commit the crime actually committed Hence where the crime committed is held to be murder the Judge cannot convict the accused under s 326/34 I P C 1935 Rang 299 36 Cr L J 1380, (1931 Rang 1 and 1935 Rang 89 **F B**) *Rel on*

——merely because two persons are killed in the the course of a riot it does not follow that murders are committed in pursuance of a common object of the unlawful assembly or that the members of the assembly must have known that they were likely to be committed in pursuance of their common intention 1937 Pat 497 38 Cr L J 1007

——where in the course of a sudden fight in which two perso stab the deceased with knives and one of them proves fatal and cau

S 34 Acts done by several persons in furtherance of common intention—*contd*

death, both cannot be convicted of murder in the absence of proof of a common intention as each of them had no expectation of what the other was exactly going to do 1937 M W N 752

——where there is a sudden fight between the parties, s 34 has no application 1935 Pesh. 41 36 Cr L J 800 1935 Cr C 250

——[illegible]

1026 1935 Cr. C 749

——the distinction between the effect of ss 114 and 34 is very fine one Sec 114 is evidently not punitory Because participation *de facto* may sometimes be obscure in detail, it is established by the presumption *juris et de jure* that actual presence plus prior abetment can mean nothing else but participation The presumption raised by s 114 brings the case within the ambit of s 34 1933 Rang 256 1933 Cr C 907

——there are some cases where the commission of an offence is abetted by aid and conspiracy In such cases the abettor may be treated as a principal under s 3 Broadly speaking however, it would be illogical to hold a man guilty of both the principal offence and its abetment 1937 Pat 263 38 Cr L J 673 15 Pat 817

——in the state of evidence in the case where it was difficult to hold that the two accused persons who did not cause any fracture of the skull had the same intention as the one who used greater force and caused the fracture, and it was not known which accused committed murder and which the lesser offence of grievous hurt, none of them could be found guilty of murder and all could be convicted only of the lesser offence of voluntarily causing grievous hurt under s 326 I P C 1937 Mad 792 1936 M W N 1124 But when the common intention may be presumed all the accused are guilty of the same offence 1937 Rang 24 38 Cr L J 284, 1933 Sind 407 1933 Cr C 1540 1933 Lah 927 34 Cr L J 911

——two persons were seen to have been moving about under [illegible]

1933 Cal 132

——s 34 applies equally to those cases in which the criminal act done in furtherance of a common intention of several persons is the act of single individual The existence of common intension is the sole test of the joint resposibility under s 34 1934 All 528 34 Cr L J 1238 1933 Cr C 863.

S 34 Acts done by several persons in furtherance of common intention—*contd*

——where the common intention of the culprits was to commit robbery and in furtherance of that intention different acts were committed by different persons and while S one of the accused had gone to fetch K for carrying out that common intention another accused shot down the deceased who was the son of K in furtherance of the same, held, that although S was not present at the time of murder he was constructively guilty under sec 302 1933 Lah 819 1933 Cr C 1063 But where the common intention is to commit robbery and not murder such intention cannot be presumed by applying s 34, 1933 Rang 204 1933 Cr C 919

S 40 Offence

——if any object which is not unlawful in itself be carried out by criminal means it becomes criminal Thus peaceful picketing which is not offence becomes so when accompanied by violence 1931 Pat 52 130 I C 269 I R 1931 Pat 173 32 Cr L J 478

S 43 Illegal, Legally bound to do

[illegible]

491 35 Cr L J 1429

S 44 Injury

——if the accused has the power according to caste custom to excommunicate it is not an injury to threaten excommunication If he has no such power it is no more than a threat of social boycott which cannot be treated as a threat of injury as defined in the I P C Nor is a threat of labour boycott a threat of an 'injury' because there is a no law to prevent any one from dissuading casual labourers from working for any particular person 1933 M W N 736

S 52 Good faith

——search made by the Police Inspector without complying with the *preliminary requirements of s* 165 Cr P C, and *not shown to have* been made under circumstances making it impossible for him to do so cannot be said to be made in good faith 1932 Pat 66 10 Pat 821 1932 Cr C 99

——it is not using due care and attention to publish defamatory statements about a person and also to publish his denial and let the public take their choice 1933 All 434 1933 Cr C 740 34 Cr L J 926

——the phrase 'due care and attention implies genuine effort to reach the truth and not the ready acceptance of an ill natured bel *Where the question is whether a public servant was justified in do*

S 52. Good faith—*contd*

. . . . a better foundation than his . foolish in believing himself ıgue and unsafe a criterian r C. 429

S 53 Punishments

——the list of punishments given in s 53 is not exhaustive Other punishments besides those mentioned in the sec can be inflicted by criminal courts in certain cases, *e g*, wh pping, detentio ı in Borstal Institute or a Training School, an order under s 565 Cr. P C 1933 Rang 329 1933 Cr C 1146

S 64 Sentence of imprisonment for non-payment of fine

——s 64 I P. C read with s 26 General Clauses Act makes it clear that the Court may impose a sentence of imprisonment in default of payment of fine imposed for breach of a statutory rule such as not taking out a l cence under s 391 of the Calcutta Mun cipal Act 58 C 1239 35 C W N 865

S 70 Fine when leviable

——where the fine is admittedly no longer leviable under s. 70 imprisonment in default of fine cannot be inflicted 37 P L R. 45

S 71 Limit of punishment of offence made up of several offences

——s 71 does not apply to conspiracy as defined in s 120 B. in connection with an offence committed in consequence of a conspiracy The conspiracy to commit an offence and the actual commission of the offence are two separate and dist nct transact ons 1933 Nag 252 1933 Cr C 936

——where a man is found to be guilty of the major offence of illicitly manufacturing excisable articles, it is unreasonable that he should be severely punished for keeping in his possession materials for manufacturing those articles and for possessing them The one offence includes all the others 1933 All 438 55 A 557 34 Cr L J 641

——where the accused were convicted under ss 147 323 149 and 325 and separate sentences were passed under ss 147 and 323 on the one part and ss 142 and 325 on the other, held that the separate

. . . . . .

——when the object of an unlawful assembly is to cause hurt, a member of that unlawful assembly can, in addition to being convicted under s 147, also be convicted and separately sentenced under s 323

S. 71. Limit of punishment of offence made up of several offences—*contd.*

if he is proved himself to have caused hurt. 1933 Mad 338 . 34 Cr. L J. 273 . 56 M. 481, (16 C. 725, 40 C. 511, 17 B. 260 F. B, 20 Cr. L. J. 65) *fol*, 53 M. L. J. 636 *Dist.*

——s 71 does not apply to the case of a person charged with offences under cl. (a) and cl (h) of sub-sec. (1) of sec. 43 of the Bombay Apkari Act as they are quite distinct offences. 1935 Bom 202 36 Cr. L. J 924

——as soon as the first injury is caused force is used and the offence of rioting is complete. Subsequent injuries though inflicted in pursuance of the same common object, would be distinct injuries justifying a conviction under s 323 Hence separate sentences under s. 147 and 323 are valid 1933 All 819 1933 Cr C 1417.

——where the object of an unlawful assembly *is to cause hurt*, a member of that unlawful assembly can, in addition to being convicted under s 147, also be convicted and separately sentenced under s 323 1933 Mad. 338 34 Cr L J 273 1933 Cr. C. 441

——when a person is charged with rioting under s. 147 and commits a fatal assault upon another person in prosecution of the common object, the case comes under s 71 I P C. and separate sentences for each of the charges cannot be inflicted 35 C W. N. 184 1931 Cal 450 132 I C 247 32 Cr. L J 990 1931 Cr C. 602 I R 1931 Cal 567

——where the offence consisted of only one beating, the accused should be convicted only under s 325 and not also for an offence under s 323 inflicted in the course of the same beating. 1933 M. W. N 244, 1937 M W N 572

——where the accused stole a calf and thereafter killed it, he can be convicted of the offence of theft as well as of mischief under ss 379 and 429 and sentenced separately for each offence. 1936 Bom 172 37 Cr. L J 553 · 60 Bom. 627.

S 75 Enhanced punishment for certain offences after previous conviction

——*s 75 should not be applied in the case of an accused person,* who has only one previous conviction and that too about ten years before. 1934 Sind 195 1934 Cr. C. 1405, or thirteen years ago and a trifling fine of Rs 10 was passed 1937 Pat. 131 . 38 Cr L J 484

——an order under s. 110 Cr. P C. cannot be correctly termed as a conviction so as to bring an offender within the ambit of s. 75 [illegible]

Lah. 433 . 34 Cr. L J. 1181 : 1933 Cr. C 673.

S 75 Enhanced punishment for certain offences after previous conviction—*contd*

——a person cannot be sentenced to an altogether incommensurate punishment for a trivial offence merely because he has been convicted manytimes before To transport a man for life for picking a pocket is extremely harsh 1933 M W N 1259, 1937 M W N 737

——when the so called previous conviction takes place after the ... of which such ... trial, the Court ... ious conviction

S 76 Act done by a person bound by law to do

——ignorance of law is no excuse, s 76 applies to mistakes of fact and not to mistakes of law 1936 Sind 153 37 Cr L J 1068

S 77 Act of judge when acting judicially

——the very existence of the exceptions to sec 499 indicates that the provisions of sec 77 cannot by themselves cover the case of remarks made by a Judge or M in the course of his office so as to exempt him from any liability under s 500 1934 Nag 123 35 Cr L J 947 1934 Cr C 515

S 79 Act done by person justified or by mistake of fact believing himself justified by law

——if on a charge under s 366 I P C the accused takes a plea under s 79 of mistake and good faith in respect of the age of the girl the onus lies on him to prove the facts necessary to ground the plea 42 C W N 896

... l Code and the person

are known erate before ion against ion against

S 84 Act of a person of unsound mind

... it mu t nature 1932 508 33

——the legal concept on of insanity differs considerably from the medical concept on 1932 All 233 1932 Cr C 231

——the mere fact that the accused was driven to desparation on account of starvation does not amount to proof of insanity 1932

S 84. Act of a person of unsound mind—*contd.*

Cal. 658 33 Cr L. J 476 I R 1932 Cal 339 137 I. C. 511 1932 Cr C 650.

——the onus of proving the exception enacted under s 84 is on the accused 32 Cr L. J 816 I R 1931 Lah 506 35 Cr. L. J 1398 35 P L R 703, 1937 Rang. 33 38 Cr L J 397

——there was strong evidence that the accused was insane a few days after the murder. There was also evidence that even prior to murder he was insane. Three assessors came to the conclusion that he was lunatic, the fourth was doubtful The accused was then sent to Mental Hospital The Superintendent wrote "accused was feigning insanity" Relying on this letter but without proof of the letter and the examination of the Supdt, the successor of the Judge convicted the *accused, held that the accused was insane when he killed the deceased* 1934 Lah 123 35 Cr L J 869 1934 Cr C. 239

[illegible]

Cr L J 278

——the accused murdered his mother in a fit of epilepsy without any cause or enmity He then hid himself in a ravine It was found on medical evidence that the accused was subject to epilectic fits and that he used to be completely unconscious during such fits, held that the unprovoked attack on his mother and his subsequent hiding were consistent with the attack on the deceased having taken place during epilectic fit 1937 Rang 99 38 Cr L J 667

——it would be obviously very difficult ordinarily to prove the [illegible]

[illegible]

——for a father to kill his three young children is certainly a most unnatural act and where no clear motive can be shown some mental derangement should be inferred. 1933 Nag 307 34 Cr. L. J 1168.

——this sec. does not apply to a case where an accused all that she committed the murder by reason of being possessed b spirit and in pursuance of the bidding of the spirit, on pain of

S 84 Act of a person of unsound mind—*contd*

herself killed by that spirit as it cannot be said to be a case of unsoundness of mind contemplated by the sec 1936 Pat 245 37 Cr L J 543

——mere unsoundness of mind is no protection unless it is shown that the accused was by reason of unsoundness of mind incapable of knowing the nature of the act. 1933 Rang 144 34 Cr. L. J 791.

S 85 Act of a person intoxicated

——that the accused was in an excited state by voluntary drunkenness, though in itself is no excuse for the crime, can be taken into consideration when the question of sentences is being considered 1937 Rang 467

S 86 Offence requiring a particular intent or knowledge committed by a person intoxicated.

——in cases of voluntary drunkenness an intoxicated person shall be dealt with as if he had the same knowledge as he would have had if he had been sober The question of intention must be determined in each case according to the actual facts proved But evidence of drunkenness falling short of a proved incapacity in the accused to form the necessary intention does not rebut the presumption that the accused, intends the natural consequences of his acts, although the drunkenness may be taken into consideration as an extenuating circumstance in passing the sentence 1934 Rang 361 1934 Cr C 1326

S 88 Act done by consent for benefit.

——where the accused believing that a certain woman was [illegible]

S 89 Act done for benefit of child or insane person, by consent of guardian

——a Hindu husband forcibly dragging his wife who is under 12 years of age from her father s house commits offence under ss 350 [illegible]

right No such general or unqualified right is now a days recognised by law and wife beating is not one of the exceptions in the chap of the General Exceptions 1936 Mad 788 37 Cr. L J 1153 1936 Cr C 876

S. 90. Consent known to be given under fear or misconception.

——the object and effect of s. 90 was not to lay down that a child under 12 years of age is in fact incapable of expressing or withholding his or her consent to an act, but to provide that where the consent of person may afford a defence to a criminal charge such consent must be a real consent, not vitiated by immaturity, fear or fraud 1933 Rang 98 : 34 Cr. L. J 696 F. B.

——[illegible] of a person, no doubt, is [illegible] of a [illegible] ports [illegible] e the [illegible] it of [illegible] be, to [illegible] r. C. 573, F. B.

S. 94 Act to which a person is compelled by threat.

——where an accused di[illegible] situation by which he became s[illegible] to which he alleged that he [illegible] provisions of s. 94 can avail [illegible] Cr. C. 919

——plea of compulsion does not hold good when the accused begins to commit the offence under a threat of instant death but completes it when all danger of instant death is removed 1937 A. I. J 1253

S. 95. Act causing slight harm

——where observations made by the Court were the subjectmatter of defamation the complaint was dismissed on the ground of trivial offence. 1931 Cr. C. 474 : 32 Cr L. J 991 1931 Oudh 392

S. 96. Things done in private defence.

——where both parties are determined to vindicate their rights by lawful force, and they engage a fight, the party who wants to plead private defence successfully should show that he was in peaceful [illegible]

[illegible] vindication of their right to property was merely a pretext, there could be no question of private defence 1935 Nag 141 36 Cr L J 861

[illegible] with each other, there can [illegible] very body taking part in [illegible] committed by him

S. 96 Things done in private defence—*contd.*

——the plea of self-defence can be raised for the first time i.. appeal if the facts on the record would justify such a plea. 1932 Lah 606 33 P. L R. 718 1932 Cr. C. 820.

S 97. Right of private defence of the body and of property.

——no right of private defence is justifiable in causing grievous hurt to an Amin who proceeds to attach honestly believing that he was entitled to do so though failing to notice that the duration of his warrant

adverse. 1933 Pat 568 ; 1933 Cr C. 1342.

Cr L. J 751.

——*if the act of mischief has already begun there is more than an*

——where the accused was not doing a lawful act when he was attacked but he was himself the aggressor and commenced beating others, he cannot invoke the right of private defence 1934 Oudh 207 35 Cr L J. 801 1934 Cr C 661.

——where both parties wanted to fight and they had it and it is impossible to determine which side attacked first, the question of self-defence does not arise 1934 Lah 512 35 Cr. L. J 1393

——sec 97 is subject to the restrictions contained in sec. 99 1933

i e was severely assaulted, held that the crops belonged to the landlord and its removal by the Manager was no offence and the tenant had no

S. 97. Right of private defence of the body and of property—*contd.*

right of private defence of property and that the right of private defence was not subsisting at the time of the attack on the manager, the cartmen having run away. 59 C. L J 482 38 C. W. N. 854 1934 Cal 610. 35 Cr L J 482.

——it is preposterous to claim for a judgment-debtor, whose property has been sold in execution of a decree, a right to assault the auction purchaser who has been put in possession of the property by the Civil Court and was protected by the Criminal Court in keeping that possession. 1934 Pat 565 1934 Cr. C. 1218.

S 99. Acts against which there is no right of private defence.

——in considering whether the right of private defence exists and can be pleaded to a charge of rioting and unlawful assembly the nature of the apprehended danger must be looked at and it has also to be seen whether there was time to have recourse to the police authorities 19 Pat. L. T. 504 1938 P W. N 593.

——where the accused party went to the disputed spot for fishing in a river knowing that they would meet opposition and with a preparation to defeat that opposition and the party of the prosecution also did the same thing, neither party could claim any right of private defence and the assemblies of men on both sides were unlawful. 1932 Pat. 189 33 Cr L. J 509

——where the warrant is illegal, resistence to process-server is no offence under sec. 186 I P C and the question as to whether there was a right of private defence under s 99 I P C. does not arise 1934 Mad 664 1934 Cr. C 1287.

——a party in possession of a property is entitled to resist by force an attack made on his property provided there is no time to have recourse to the public authorities for protection The accused defend themselves with sharp instruments when the aggressors are armed with similar weapons 1933 Pat. 434 34 Cr L J 1075 1933 Cr C 972

——there is no right of private defence against persons who act under the direction of a public servant like a bailiff, who acts in good faith under colour of his office though that act might not be strictly justifiable by law 1936 Lah 851 1936 Cr C 874

——where a police officer entrusted with the execution of a bailable warrant deliberately fails to communicate the fact that the warrant is bailable and refuses to give opportunity of giving bail, he is not acting in good faith and there is a right of private defence 1935 All 913 36 Cr. L. J 1501 1935 Cr. C 1129

——s 99 is designed to protect a public servant and to limit th amount of resistance which may be offered to him Sec 183 or other hand is not intended for the protection of the public servant, enables him to take the offensive and prosecute anybody who resists taking of property by lawful authority Sec 99 does r

S. 99. Acts against which there is no right of private defence—*contd*

extend the operation of sec 183. 59 B 545. 1935 Bom. 233 · 36 Cr. L. J 1263

——the accused was justified in pushing the Inspector back to prevent the search when the latter did not comply with the preliminary requirements of sec. 165 Cr. P C. 1932 Pat 66. 33 Cr. L. J 233

——an arrest or attempted arrest by a private person, if not strictly justifiable by law is not outside the provocation mentioned in exception. *1933 Pat.* 508

S 100 When the right of private defence extends to the causing of death

——*it is difficult to lay down any hard and fast rule to determine* the amount of harm which is legally justifiable or permissible in the exercise of the right of *private defence* If *a person* is armed with a hatchet and disables his adversary by the infliction of one blow on his head, it cannot be urged that he has *reasonable* apprehension left that if he did not repeat his blow, grievous hurt will be the consequence. 1934 Lah 748 1934 Cr. C 1097.

——squeezing of testicles can result in death and the apprehension thereof can give the accused the right of private defence 1937 Lah. 108 38 Cr L. J. 867.

[illegible]

step [illegible] 1933 [illegible]

——when peaceful citizens are attacked by a body of men armed with deadly weapons, it cannot be said that the right of private defence [illegible] turn use similar weapons in their [illegible] 765 [illegible] o had already attacked a cousin [illegible] ith ballam and barchi bent upon [illegible] *The accused gave the deceased* a blow in his stomach [illegible] hich he fell down, held that the accused was justified in *protecting* himself and his people 1933 Lah. 1053

——*when a man is suddenly attacked by two or more persons* it is not fair to weigh his actions in golden scales 1933 Sind 138 34 *Cr L J 760.*

[illegible] A [illegible] ed to strike [illegible] in which [illegible] ck A with [illegible] exceeded [illegible] 04, Part I, [illegible] Penal Code 1933 Lah. 1040

S 100 When the right of private defence extends to the causing of death—*contd*

——the right of private defence of the body of the accused s wife extends to the voluntary causing of dealt where the offence wh ch

1934 Cr C 1245

——a woman being brutally beaten by her l usband rushed out of her room and asked l er brotl er wl o was sleep ng near by to protect her she was followed by her husband who said that he would continue to beat her The brother thereupon seized a hatcl ed and killed h m There was evidence that if he had not done so the deceased m ght have killed him held that the brother acted in the r ght of private defence 1938 Lah 269

S 101 When Right extends to causing any harm other than death

——where b th part es del berately engaged tl emselves in a mutual fight neither of tl em was ent tled to a right of private defence and it was immaterial as to who gave tl e first blow in such a figl t 1934 Lah 740 1934 Cr C 1092

S 102 Commencement and continuance of the right of private defence of the body

——it is d fficult to Judge tl e extent of the r gl t of private defence by any hard and fast rule and the accused cannot be expected to

Cr L J 1175

——tl e mere presence of persoi s who do not take steps to protect the accused from tl e assault of the deceased does not take away the rigl t of private defence of the accused 1933 Lah 167 34 Cr L J 1175

S 104 When such right extends to causing any harm other than death

——when two persons are in a field the person entitled to immedia possession is the person in lawful possess on and the other is When the trespasser prevents the plough ng and attacks the oil

S 104 When such right extends to causing any harm other than death—*contd*

... njuries with stick ... punishment. But ... ath would make ... not under s 302 ... J 861. ... be a thief, beat ... ot, held that the accused had exceeded the right of private defence. 1935 Oudh 412 36 Cr L J 1209

——where the accused entitled to joint possession of certain land along with the deceased and his brothers, obtains unlawful possession of a part of such land for a couple of hours and the persons already in possession try to eject him, the possession of the accused is no better than that of trespasser and cannot give him the right of private defence while the other side has got that right. 1938 Lah 60.

S 105 Commencement and continuance of the right of private defence of the Property

——where the accused continued to chase a thief after he had thrown away the stolen property and assaulted and killed him, the assault was committed not with a view to recover the property but to capture the thief which is not contemplated by sec 105, and the accused is not protected. 1934 Lah 595 · 1934 Cr. C. 923.

S 107. Abetment of a thing.

——a person who knowingly aids in the disposal of stolen property falls under the clause (3) of sec. 107 and is an accomplice 1934 Mad. 721 1934 Cr. C 1400

——the law of agency is not a doctrine of criminal law but of civil law The principal can be made responsible for, and found guilty of, the acts of his agents, only where it is proved that he has instigated or otherwise abetted the acts of the person who actually committed the crime. 1937 Rang. 117 38 Cr L J 764

——a person who makes a theft or robbery feasible by giving another person money for that person to be robbed cannot be said to have abetted the actual robber with whom he has never had any communication whatever. 1936 Rang. 242 37 Cr L. J. 723

——sec 120 B appears to have been introduced to fill a gap in sec 107 I P C defining abetment A conspiracy formed in order to do an illegal act or an act not illegal by illegal means in no case amounts to an abetment as defined by sec 107 and will not amount to a criminal conspiracy unless some act besides the agreement is done in pursuance thereof Where a criminal conspiracy amounts to an abetment under sec. 107, it is unnecessary to involve the provisions of ss 120 A and 120-B, because the Code has made specific provision for the punishment of abetment by ss 109, 114 115 and 116, and no

S 107 Abetment of a thing—*contd*

separate charge under sec 120-B need be framed in such a case when there is already a charge under sec 107 1936 Pat 346 37 Cr L J. 893 1936 Cr C 539

S. 108 Abettor

——to constitute the offence of abetment it is not necessary that the act abetted should be committed The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is actually done by the persons abetted 1935 Sind 78 36 Cr L J 877

——a person who instigates another to offer a bribe to a public servant is guilty of an abetment of the offence under sec 161 I. P. C. 1934 Pesh 110 1934 Cr C 1315

——the fact that a person s motor car was used for the purpose of abduction in question is no evidence that the motor car was used with his knowledge or under h s orders and the mere fact that his motor car was used does not bring him with n the definition of abetment. 1933 Rang 297 1933 Cr C 1128

——explanation 3 to sec 108 applies to abetment generally there is nothing to indicate that it applies only to abetment by instigation and not to other kinds of abetment 1933 All 513 34 Cr L J 623 55 A 654

S 108 A Abetment in British India of offence outside

——the word offence denotes an act or acts punishable by the Penal Code A child marriage celebrated outside British India is not one such and hence its abetment s not punishable under this sec 1938 Nag 235

S 109 Punishment of abetment where no provision is made

——any person who inst gates a raider, or leader of a raid in wh ch death has been caused is guilty of abetment of murder 1934 Cal 221 35 Cr L J 334 1934 Cr C 315 F B

——s 109 has no appl catio i wl ere the offence is never committed 1933 Rai g 297 1933 Cr C 1128

——under sec 6 of the Bengal Cr L Amendment Act the Court cannot pass a sentence of death on a person found gu lty of abetment of murder under s 307 I P C read with s 109 nor can be sentenced to transportation for life S 307 I P C cannot be compounded with sec 109 The maximum sentence that can properly be passed against such person is one of fourteen years rigorous imprisonment under the second part of sec 115 I P C 39 C W N 334 1935 Cal 561 36 Cr L J 1275 Sp B

——where a girl admin stered *aconite* to her hubsband by mixing the powder in cooked food the Judge should have left as a question o fact to the jury the question whether the giving of the poison to tl

S 109. Punishment of abetment where no provision is made—*contd*

father-in law and brother-in law along with the husband was probable and though the conviction under ss 302 and 109 I P C could not be sustained a conviction under secs 302 and 115 I P C should be substituted 58 C 1228 35 C. W. N 573 1931 Cr C. 1021 1931 Cal 757

——arrest of judgment-debtor exempted from arrest—the act of the peon not being an offence the decree-holder was not guilty of any abetment of an offence 39 C W N 318 36 Cr L J 1252 1935 Cal 551

——there is no reason why s 109 should not be applicable to cases under s 182 I P C and a man can legally be convicted under s 182 read with s 109 1937 All 755

——active abetment at the time of committing the offence is covered by s 109, and s 114 is clearly intended for an abetment previous to the actual commission of the offence 1937 Pat 317 38 Cr L J 790

S 111 Liability of abettor in case of different act done

——the word act' means criminal act 1931 Pat 52 32 Cr L J 478 1931 Cr C 148

——once an order has been passsed by the M decl ning to take action under ss 211 and 193 that order can be displaced only by the order of the Appellate Court under s 476-B Cr P C The Dt M. has no power to direct the prosecution to be commenced 1938 Pat 145

——the illustrations to s 111 I P C show that it contemplates ... also where a different

J 628

t act than

a probable

influence of

is likely or

1935 All

S 114 Abettor present when offence is committed

——s 114 applies only in those cases in which there is evidence of prior abetment, that is to say, where the person even if not present, would be liable to be punished as an abettor and he is also present The abettor in such a case is liable to be treated and punished as a princ pal But it does not necessarily follow that the person who does not act is not liable as a principal also. 62 C 629 39 C W N 396 1935 Oudh 469 36 Cr L J 1151, 1935 Sind 78 36 Cr L J 877, 1934 Lah 813 1934 Cr C 1127

——the language of s 114 ind cates that there must be evidence of abetment that is instigation, conspiracy or aid independent of and

S. 114 Abettor present when offence is committed—*contd.*

prior to anything done by the accused when present at the scene of crime. The section cannot apply when the abetment consists solely ... '9

... is ... ese ... 34 ... ble. 1934 Rang 98 35 Cr. L J 925

——the distinction between the effect of ss 114 and 34 is very fine one Sec 114 is evidentiary, not punitory, because participation *de facto* may sometimes be obscure in detail, it is established by the presumption *juris et de jure* that actual presence plus prior abetment can mean nothing else but participation 1933 Rang 236 1933 Cr C 907.

——in order to succeed in a prosecution for abetment of bigamy the prosecution must prove that the person who is alleged to have committed bigamy was married lawfully once and has gone through a second marriage ceremony, and that the person alleged to have abetted the bigamy when he arranged or assisted at the second marriage knew these things 1934 All 589 35 Cr L J 1053 1934 Cr C 756

S 115 Abetment of offence punishable with death or transportation for life, if offence not committed

... sec refer to sections in ... punishable with death or ... under s 115 must be ... any particular person against any particular persons It includes abetment of the commission of an offence by unspecified persons against a class or number of other ... ed 60 C. 427 37 ... L J 164 ... punishable under ... the offence would not fall under s 115 1933 Lah 660 34 Cr L J 1207 1933 Cr C 882

S 117 Abetting commission of offence by the public or more than ten.

——where a speech was addressed to a large audience where in the speaker incited the audience to murder Englishmen and Government officials, the more appropriate section to be charged with was s 117 read with sec 302 1933 Lah 660 34 Cr L J 1207

——mere intention or preparation to instigate is neither instigation nor abetment So where leaflets were posted by the accused dead of night and immediately removed by the police, held that as

S 117 Abetting commission of offence by the public or more than ten—*contd*

publ c did not a id could not have read it the accused were not gu lty under s 117 and the police officers themselves could not be classed as the public 36 C W N 182 1932 Cr C 803 1932 Cal 760 140 I C 787

——revolutionary songs in public meeting without the assent of the President *does not make h m liable for abetment* 36 C W N 191 1932 Cr. C 549 1932 Cal 549 33 Cr L J 699 I R 1932 Cal 519 138 I C 763

——a person who delivers a speech inciting would be str kers against black legs is not gu lty of an offence under sec 505 (c) but the speech may *prima facie* be the subject of a prosecution under s 117 I P C 40 C W N 1218

S 120 A Criminal Conspiracy

——the essence of the offence of criminal consp racy is agreement

matter of inference deduced from the persons concerned done n pursuance of an apparent criminal purpose in common between them 1933 Lah 977 1933 Cr C 1467

——to prove consp racy there need not be evidence of d rect concert nor even of any meeting together of the *conspirators* The *agreement* can be inferred from collateral acts but these acts must show a common plan so as to exclude a reasonable possib lity of the acts of the cons pirators having been done separately and connected only by co nc dence 1937 Cal 433 38 Cr L J 852 **Sp B**

been done separately and connected only by co ncidence 63 C 929 64 C L J 154 37 Cr L J 394 40 C W N 432 1936 Cal 73

——in order to const tute the offence of consp racy as defined in th s sec it is only necessary to sho v that the persons concerned had agreed to do or cause to be done an illegal act or an act wh ch is not llegal by llegal *means and it is immaterial whether the illegal act* is the ultimate object of such agreement or is merely inc dental to the object Jo n ng of several persons in one trial under the general charge of consp racy along w th charges for other substantive offences wh ch could be tried separately commented upon 1936 Cal 753 1936 Cr C 1043

S 120-A. Criminal Conspiracy—*contd.*

——it is true that a mere agreement may bring the conspiracy into existence but no where it is said that after that the offence no longer exists. Criminal conspiracy continues so long as the persons constituting the conspiracy remain in agreement 62 C. 749 36 Cr. L. J. 982 1935 Cal. 316.

——where a company is floated and registered under the Companies Act and the scheme of the company is set out in a Memorandum of Association and the agents and supervisors of the company made misrepresentation and induced villagers to apply for loan and pay admission fee and deposit but the directors did not induce any body, held that though the scheme was of "snow ball" nature and highly speculative it was not dishonest or fraudulent and the directors could not be held to be party to any fraud or conspiracy. 1936 Cal. 440: 1936 Cr C 667.

——for establishing a charge of conspiracy having for its object the subversion of British Rule in India by armed revolt, evidence has to be taken of persons who may have knowledge of secret organisations but who have not taken part in the perpetration of a crime, persons to whom overt acts can be attributed It would not be right to regard a person who is cognizant of a crime or who has made no attempt to prevent it or who did not disclose its commission as an accomplice and to apply to his case the same rule as applies to accomplices 63 C. L. J. 191 1936 Cal 101 37 Cr L J 445

——to establish a charge of criminal conspiracy the prosecution must prove an agreement between two or more persons to do, or cause to be done, some illegal act or some act which is not illegal by illegal means, provided that where the agreement is other than one to commit an offence the prosecution must go further and prove that some act besides the agreement was done by one or more of the parties in pursuance of it Where the conspiracy alleged is one to commit a series of serious crimes, mere proof of agreement between the accused is sufficient to sustain a conviction 38 Cr. L. J. 684 1935 All. 162.

——s. 120-A or s. 120 B is not applicable where actual offence has been committed. Person committing offence should be tried for substantive offence and persons in conspiracy to do that offence should be tried for abetment 1938 Mad 130.

——conspiracy resting on proof of overt act which amounts to offence—proper course is to try for overt act—charge of conspiracy on chance securing conviction for overt act is not proper. 1938 Cal 51, 38 C. 559, 1916 Cal 188, 39 C. L. J 151 *Rel on*

——it is not act done is pursuance of the conspiracy but the place [illegible] the juri

S 120-B Punishment of criminal conspiracy

——under s 120-B if it provided that the punishment shall be the same as if the conspirator had abetted the offence. Therefore, under s 109, if the deceased was murdered in consequence of the conspiracy, the punishment is that for murder. On the other hand if the murder was not committed in consequence of the conspiracy under s 115, the maximum term is rigorous imprisonment for seven years A sentence of 10 years' rigorous imprisonment would, therefore, be clearly, illegal in any case 1937 Cal. 578 171 I C 944.

——it is possible that the offence of fabricating evidence to obtain a capital conviction can be committed though the offended believes the accused to be guilty and though the accused is in fact guilty And [illegible]

sets of conspirators is so far weakened as, measured by the standard of proof required in a criminal case, to disappear. 37 C W. N. 514 1933 P C 124 34 Cr L J 322 57 C L J. 177 1933 Cr. C. 442 P C

——even the act of the accused in entering into a conspiracy to beat, to rob arms and to escape is *per se* an offence under s 120 B; if they have been convicted and sentened separately for the several acts which constitute such conspiracy, separate sentences for offence under s 120-B is not called for 1933 Lah 977 1933 Cr C 1467.

——it is not necessary in a case of criminal conspiracy for one conspirator to be aware of all the acts of his fellow conspirators committed in pursuance of the conspiracy 1934 Sind 57 35 Cr. L J. 1337 1934 Cr C 628

——proof of one offence of dacoity or robbery is not sufficient to support a charge of conspiring to commit robberies and dacoities 1934 Oudh 106 35 Cr. L J 796 1934 Cr C 334

——in cases of criminal conspiracy, it would be unreasonable to require the Crown to establish with accuracy when the conspiracy began or ended These facts are best known to the conspirators and there is no objection to approximate dates being entered in the charge. 1934 Sind 57 35 Cr L J 1337

——the prosecution is to prove the case of conspiracy Nevertheless where groups of persons are found in constant communication and each group appears to have a single form of activity, communication between the two groups must receive the adverse interpretation unless a satisfactory explanation is offered 1934 Pat 575 · 1934 Cr C 1240

——where the accused were convicted of conspiracy to commit an offence under s 326 I P. C only on circumstantial evidence, held that the conviction could not be upheld as there was no evidence whatever to support the particular conspiracy and as the jury were not

S. 120 B Punishment of criminal conspiracy—*contd.*

[illegible] to the actual assault were made [illegible] J 966 1937 Cal 458

[illegible] conspiracy it is not generally possible to find direct evidence of the plotting and planning by which a movement of the kind such as to deliver seditious speeches against the Govt is instigated and strengthened The strongest possible evidence is however afforded by the conduct of those who attended the meetings, the speeches they delivered and the behaviour of their associates subsequent to hearing them 1937 Rang 161 38 Cr L J 801

——the practice of adding a charge under s 120-B in cases where it is not necessary, with the result that jurors sit in the same trial as assessors, is condemnable 1938 Cal 658

——as there is no express provision made in the Code for the punishment of conspiracy to fabricate false evidence, s 120 B applies to such offence 1938 Nag 444

S 121 Waging or attempting to wage war or abetting waging war

——proof of the offence of abetting waging war 1937 Rang 118 38 Cr L J 715 1934 Cal 221 35 Cr L J 334 1934 Cr C 315 **F B**

——there are two kinds of levying war one against the person of the king to imprison to dethrone or to kill him or to make him change measure or remove counsellors, the other, which is said to be levied [illegible] words against him in his [illegible] id assemble to attain by force [illegible] c nature that is levying war [illegible] Rang 116 1933 Cr C 641 34 Cr L J. 929

S 121-A. Conspiracy to commit offences punishable by sec 121

——for the purpose of s 121 A it is not necessary that any act or illegal omission should take place in pursuance of the conspiracy The agreement is in itself enough to constitute the offence The offence of criminal conspiracy is complete as soon as two or more persons agree to do or cause to be done an illegal act or an act which is not illegal by illegal means 1933 All 690 34 Cr L J 967 1933 Cr C 1202

——a mere holding of communist beliefs or doctrines is not punishable *per se* A theoritical communist or a student of communism cannot be said to be guilty of an offence *Above case*

——in law the King never dies It is enough for the prosecution to prove that there was a conspiracy to deprive the King Emperor of the Sovereignty of British India It is not necessary to show further that the accused were conspiring for such deprivation to take place the life-time of His Majesty the present King Emperor *Above case*

S. 121-A. Conspiracy to commit offences punishable by sec 121—*contd.*

——the section draws a distinction between the Sovereign for the time being of United Kingdom and the Government of India or the Local Government. A conspiracy to change the form of the Government of India or of any Local Government, even though it may amount to an offence under another section of the Code, would not be an offence under sec 121-A, unless it is a conspiracy to over awe such Government by means of criminal force or show of criminal force. *Above case*

beliefs of the
e such sentences
offenders thus-
case.

——where a conspiracy was in action or existence and the accused person was still a member of it and it was his intention to use violence when occasion demanded it and he did use violence, he was a rebel in arms against the Crown and in the unlawful possession of deadly weapons It was immaterial whether accused used those weapons in acts of aggression or of resistance 1934 Cal 221 35 Cr L J. 334 1934 Cr. C 315 **F. B**

——where an institute had been attacked because the persons using it were Europeans and Anglo Indians who might be expected to be supporters of the Govt, the mere fact that only one of the persons present there was an Official would not make the raid on the institute anything less than waging war *Above case*

contemplated by sec
of the existence of a concealed intention 1937 Cal 99 38 Cr L J 818 **Sp B**

and murder
rding
ociety
- kept

S. 124-A Sedition.

——the word "disaffection" is a positive political distemper a positive feeling of aversion akin to disloyalty, a defiant insubordination of authority or secretly seeking to alienate the people and thereby weaken the bond of allegiance, it is not a mere absence or negation of

S. 124-A. Sedition—*contd.*

love or good will. 63 C. 488 . 40 C. W. N. 607 1936 Cal. 524 : 37 Cr. L. J. 1077.

——the case of bringing into hatred or contempt and that of

of the

ne other

with the

tion between the Government and the form of the Government *Above case*

——the terms "Imperialism" and "Imperialistic Government" and

Cal. 140 · 34 Cr. L. J. 309

——in a prosecution under sec. 124-A, the fact that the speech

meaning of sec 124-A. 1938 Lah. 629

Youth League, the speech did not come within the provisions

S 124 A Sedition—*contd*

124-A 39 C W. N 1245 36 Cr L J 1370 62 C L J 116 193
Cal 636

——when reading an article as a whole it is clear that whatev
may have been meant by the opening paragraph throughout the rest
the article, the Government established by law in British India is referre
to it can be held without evidence to that effect that the readers woul
regard the whole as an attack upon the British Government in Indi
1933 Cal 141 34 Cr L J 310 1933 Cr C 202 1930 Cal 244 *Rel on*

——charge of partiality against Government alleging that the Gov
sided with the capitalists as against the labourers is an offence unde
s 124 A 34 Bom L R 1642

——where the words expressed the view that the law had bee
employed as a weapon of tyranny and that the administration of th
law view with pleasure execution carried out in pursuance of the law
they constitute an offence under s 124 A Held further that th
Govt established by law in British India includes the executive powe
in action and does not mean merely the constitutional frame-work 3
C W N 510 59 C 1197 33 Cr I J 690 1932 Cr C 547

——journalist s comment when constitutes offence under this sec
1932 Cal 758 1932 Cr C 801 33 Cr L J 702

——a man may make ninety nine non seditious speeches yet hi
hundredth speech might be full of sed tion 1938 Mad 758

——a speech is to be adjudged not by the views of the accused
or his political party Advocacy of principles is not sed tion but adop
tion of methods and modes intended to cause disaffection towards
Government is It is possible to express disaffection with Government
without exciting disaffection 1938 Mad 758

——no doubt every short hand writer is fallible and may make a
few mistakes both in the recording of the subject matter of the speech

sale to attach undue significance to any particular sentence 1938 Mad
758

——in awarding sentence, the circulation of the paper, the age and
the education of the accused may be considered 1933 Cal 140 1933
Cr C 201 34 Cr L J 309 142 I C 292

S 141 Unlawful assembly

——where two unlawful assemblies fight w th each other there can
who is proved to have
for the offences com
52
unlawful only when it is
to enforce a right or supposed right but not when possibly beyond doubt

S. 141 Unlawful assembly—*contd.*

manner he has every right to do so, even though that may involve the peaceable ejectment of another, and the ejected person has no right to re enter and use force for that purpose 1934 Cal 273 35 Cr L. J 1313 38 C W. N. 77 1934 Cr C 397

——where the purchaser of a lorry committed default in payment of instalment of the purchase price and under the agreement the vendor company was entitled to recover possession of the lorry and where the servants of the purchaser were in peaceful possession of the lorry the agents of the company tried to recover possession by force and were resisted and received injuries, held, that the company had no legal right to use force, their right was only to recover possession and damages through Civil Court. 1934 Oudh 108 35 Cr L. J 740

——the members of one community cannot take their *lathis* and assemble for the purpose of using force and violence to prevent the sacrifice of cow by members of opposite community 1935 All 931 : 1935 Cr. C 1177

——unless a right of private defence is established a claim of title or a claim of possession, even *bonafide*, will be of no avail There is no ... r supposed ... forcibly to ... 16 11 Pat. ... 496, 16 C. 206 *fol*

S 142 Being member of unlawful assembly.

——s 142 shows that it is sufficient for the prosecution to prove against an individual that he remained in the unlawful assembly as soon as he was aware that the assembly was unlawful The word ' continues" means physical presence. Therefore if the defence is that a particular person was present with an innocent intention the burden of proving that innocent intention is on him 34 Cr L J 814 1933 Cal 361

S. 143 Punishment

——where the accused were found in a temple in the middle of night with house-breaking implements aruvals and guns in their possession, held, that they were guilty of an offence under s 143 as they must have been there with a common object of an unlawful kind but the facts did not suffice to support a conviction under s 120-B 1938 Mad 726.

——certain persons were charged under s 430 I. P C for ting mischief by cutting a *band* of a river and thus causing demun of the supply of water for agricultural purposes. They were

S 124 A Sedition—*contd*

124-A 39 C W. N 1245 36 Cr. L J 1370 62 C L J 116 1935 Cal 636

——when reading an article as a whole, it is clear that whatever may have been meant by the opening paragraph throughout the rest of the article, the Government established by law in British India is referred ... that the readers would ... India *Rel on* ... Govt under

——where the words expressed the view that the law had been employed as a weapon of tyranny and that the administration of the law view with pleasure execution carried out in pursuance of the law they constitute an offence under s 124 A Held further that the Govt established by law in British India includes the executive power in action and does not mean merely the constitutional frame-work 36 C W. N 510 59 C 1197 33 Cr L J 690 1932 Cr C 547

——journalist s comment when constitutes offence under this sec 1932 Cal 758 1932 Cr C 801 33 Cr L J 702

——a man may make ninety nine non seditious speeches yet his hundredth speech m ght be full of sedit on 1938 Mad 758

——a speech is to be adjudged not by the views of the accused or his political party Advocacy of principles is not sedition but adop tion of methods and modes intended to cause disaffection towards Government is It is possible to express disaffection w th Government without exciting disaffection 1938 Mad 758

——no doubt every short hand wr ter is fallible and may make a ... of the speech

758 ——in awarding sentence, the circulation of the paper, the age and the education of the accused may be considered 1933 Cal 140 1933 Cr C 201 34 Cr L J 309 142 I C 292

S 141 Unlawful assembly

——wl ere two unlawful assemblies fight with each other there can ... who is proved to have ... for the offences com ... 52 ... unlawful only when it is to enforce a r ght or supposed r ght but not when possibly beyond doubt

S. 141 Unlawful assembly—*contd*

it is to maintain a right and to prevent another from enforcing his right or supposed right 1933 Oudh 279 34 Cr L J 748

——if any one else is in wrongful possession of property the decree-holder purchaser must not take possession by means of criminal force or show of criminal force But if he can obtain it in a peaceable and easy manner he has every right to do so even though that may involve the peaceable ejectment of another, and the ejected person has no right to re enter and use force for that purpose 1934 Cal 273 35 Cr L J 1313 38 C W N 77 1934 Cr C 397

——where the purchaser of a lorry committed default in payment of instalment of the purchase price and under the agreement the vendor company was entitled to recover possession of the lorry and where the servants of the purchaser were in peaceful possession of the lorry the agents of the company tried to recover possession by force and were resisted and received injuries held, that the company had no legal right to use force their right was only to recover possession and damages through Civil Court 1934 Oudh 108 35 Cr L J 740

——the members of one community cannot take their *lathis* and assemble for the purpose of using force and violence to prevent the sacrifice of cow by members of opposite community 1935 All 931 1935 Cr C 1177

—— ... m of title ... There is no ... r supposed ... forcibly to ... 16 11 Pat ... 496, 16 C

206 *fol*

S 142 Being member of unlawful assembly

...

person was present with an innocent intention the burden of proving that innocent intention is on him 34 Cr L J 814 1933 Cal 361

S 143 Punishment

——where the accused were found in a temple in the middle of ... posses- ... as they ... l but the ... 3 1938 Mad 726.

——certain persons were charged under s 430 I P C ... ting mischief by cutting a *band* of a river and thus causing ... of the supply of water for agricultural purposes They

S 143 Punishment—*contd*

charged under ss 143 and 144 for being members of an unlawful assembly the common object of which was to commit mischief The M did not convict them under s 430 because he felt that there was no demunition in the supply of water The accused were entitled to be acquitted under ss 143 and 144 also 1934 Pat. 505 1934 Cr C 1098

S 145 Joining or continuing in lawful assembly knowing it has been commanded to disperse.

——where the congress processionists refused to take a different route as ordered and refused to disperse held that the conduct of the accused coupled with the fact that the procession was animated by hostility to the established Govt showed that they were determined *to disregard and disobey any lawful order and that the conviction* under s 145 I P C was proper 1933 Cal 361 1933 Cr C 497 34 Cr L J 814

S 146 Rioting

—— [illegible] of rioting may be forc [illegible]
65 36 [illegible]
—— [illegible]
response [illegible]
to mak [illegible]
L J 271

——burning hayricks and cattlesheds constitutes violence within sec 146. 1933 M W N 1138 (40 C 367 44 M L J 407) *Rel on*

S 147 Punishment for rioting

——in order to maintain a conviction under sec. 147 there should be a clear finding as to the common object of unlawful assembly and it must be stated in the charge 1934 Sind 164 1934 Cr C 1266.

——where in a charge under sec. 147 and 452 I P C the common object of an unlawful assembly is stated to be to overawe" the complainant, the word ' overawe ' is tantamount to intimidate which is included in the definition of sec 441 I P C which is involved in the offence of sec 452, so the charge is not defective 1935 All 647 36 Cr L J 763

——where the Court finds that more than five persons took part in the riot the mere fact that evidence is not sufficient to convict five persons would not result in the acquittal of the convicted persons under sec 147 1934 All 881 35 Cr L J 1494

——when among 8 persons some were armed with deadly weapons *and some only with lathis it was safer to convict the latter under sec 147* 1933 Oudh 333 1933 Cr C 780.

——the omission to state in the charge that the accused formed an unlawful assembly may be cured by sec 535 or 537 Cr P C, if there is

S. 147. Punishment for rioting—*contd.*

no prejudice to the accused. 1935 All. 627 · 36 Cr. L. J. 1260 1935 Cr. C. 641.

1074.

——when the object of an unlawful assembly is to cause hurt, a member of that unlawful assembly can, in addition to being convicted under sec. 147, also be convicted and separately sentenced under s 323, if he is proved himself to have caused hurt. 56 M. 481 1933 Mad 338. 34 Cr. L. J. 273, (40 C 511, 17 Bom 260 F. B) *fol.*

——where a large number of persons are convicted on a charge of

M. W. N. 391.

——delivery of possession without notice required by Or 21, R. 22 (1) (a) cannot be questioned by the judgment-debtor who forcibly disturbs the possession of the decree-holder. 1932 Pat 244 · 139 I. C 585 · I. R 1932 Pat 246 1932 Cr C. 641 33 Cr. L J 862, 41 C. 43, *fol.*

——there is no statutory provision in India justifying a private person in demolishing a building and causing loss to another person by way of abating a nuisance Consequently forcible demolition of such a structure is an offence under s 147 1933 M W N. 905

——where four out of seven persons charged with the offence of rioting are acquitted the rest do not form unlawful assembly and hence should be acquitted 1938 Mad 392, 1923 Lah 692, *Rel on*

S 148 Rioting armed with deadly weapon.

——under sec 148 only those members of an unlawful assembly can be convicted who are actually armed with deadly weapons and not the others 1934 Lah 632 1934 Cr C 967

——a person convicted both under ss 324 and 148 I P C can be sentenced only under one or the other of the two sections 1934 Lah 614 1934 Cr. C 914

——where a trespasser or a stranger is in possession of a property a another is no answer to a forcible entry thereo under sec 148 I. P. nces on both sides conflicting the marks of injury upon the persons would be the test All. 439 : 1931 Cr C 711, 1931 All 712 1931 Cr C. 1048

S 149 *Every member of unlawful assembly guilty of* offences committed with common object.

——ordinarily sec 149 is inapplicable to an offence under sec 396 I P. C But when an unlawful assembly had existed from the very outset before the dacoity with murder was committed and it was in the course of the riot that the offence of dacoity with murder was committed, the trial Court would be well advised to make clear the joint and constructive responsibility of all the rioters, 1935 Oudh 190 1935 Cr. C. 279.

——the words "in prosecution of the common object of the unlawful assembly" do not mean "during the prosecution of the common object" but only mean that the offence committed must be immediately committed with the common object of the unlawful assembly of which the accused were members 1935 Oudh 52 36 Cr. L J. 268

——it is true that s 34 and s 149 are not identical in terms but *there are cases in which they do overlap Hence even where s 149 is* found not to apply, yet if accused had the common intention of causing hurt to their victim and therefore if hurt was caused by any of them [illegible] 1938 Lah [illegible] not be [illegible] C, if

— [illegible] people attack a man and cause his death [illegible] ok, [illegible] be [illegible] the persons should be charged under s 149 read with s 302 1935 Rang. 406 1935 Cr C 1190

——if a number of men armed with spears rush at another and kill him, then there is the inference of law and fact that the common intention of the assailants was to kill their victim and all are liable to be convicted under s 302 read with s 149 1935 *All* 362 *1935 Cr. C. 362*

——where all the accused were proved to have taken part in the [illegible] who had committed the [illegible]

S 149 Every member of unlawful assembly guilty of offences committed with common object—*contd*

——where the object of conspiracy is to commit a dacoity and not to commit a murder and if murder is committed by one of the dacoits in the commission of the dacoity, others can be convictad only under s 396 but not under s 302/149 1933 Lah 977 1933 Cr C 1467

——ss 225 and 332 are not to be read with s 149 Where the common object of an unlawful assembly is not to commit grievous hurt but to release a person from arrest and grievous hurt is caused, but it is not known by whom it is caused conviction of all must be only under s 332 and not under s 225 1933 Lah 159 34 Cr L J 679

——in a case of rioting, murder and arson, the prosecution is not called on to prove the part which each accused person took in the riot Every member of an unlawful assembly is guilty of offences committed in the prosecution of the common object of the unlawful assembly 55 A 689 1933 All 535

is found to be amongst a mob of rioters the law presumes that he shares their common object and intention The onus is upon him to prove the contrary and his innocence 1934 All 776 35 Cr L J 919

——when shooting is resorted to by dacoits to remove opposition all dacoits are guilty of murder 1934 Rang 30 35 Cr L J 863

——s 149 cannot be construed to mean that all members of an assembly are necessarily guilty of the same offence as the principal offender It has to be determined with reference to the facts of the case The principles of ss 38 and 110 I P C apply to offences under s 149 also, and the liability of individual members of an unlawful assembly under s 149 depends on their intention or knowledge 1936 Pat 481 37 Cr L J 630

S 151 Knowingly joining or continuing in assembly of five or more commanded to disperse

——s 151 does not apply to cases in which the assembly was unlawful from its inception or had become so before the command for dispersal was given 1934 Lah 243 35 Cr L J 1094

——in the absence of requisite conditions as contained in s 127 Cr P C a police command on a peaceful procession to disperse is not lawful and the disobedience thereof is not an offence under s 151 I P.C. 1933 Nag 277 34 Cr L J 705

S 153 Wantonly giving provocation with intent cause riot

——the fact that the offence under s. 153 is punishable maximum of six month s imprisonment indicates that the sec.

S 149 Every member of unlawful assembly guilty of offences committed with common object.

——ordinarily sec 149 is inapplicable to an offence under sec 396 I. P C But when an unlawful assembly had existed from the very outset before the dacoity with murder was committed and it was in the course of the riot that the offence of dacoity with murder was committed, the trial Court would be well advised to make clear the joint and constructive responsibility of all the rioters 1935 Oudh 190 1935 Cr C. 279

——the words "in prosecution of the common object of the unlawful assembly" do not mean "during the prosecution of the common object but only mean that the offence committed must be immediately committed with the common object of the unlawful assembly of which the accused were members 1935 Oudh 52 36 Cr. L. J. 268

——it is true that s 34 and s 149 are not identical in terms but there are cases in which they do overlap Hence even where s 149 is found not to apply, yet if accused had the common intention of causing hurt to their victim and therefore if hurt was caused by any of them they are all liable under s 34 for the hurt that was caused 1938 Lah 543 Where a charge is made of an offence under s 149 it will not be illegal to convict the accused of that offence read with s 34 I. P. C, if no prejudice is occasioned to the accused 1934 Mad 565

——where a number of people attack a man and cause his death, and it is not known what individual action any one particular man took, and it is not possible to assume a common intention to kill, it should be held that the death was caused by body of persons as a whole and the persons should be charged under s 149 read with s 302 1935 Rang. 406 1935 Cr C 1190

——if a number of men armed with spears rush at another and kill him, then there is the inference of law and fact that the common intention of the assailants was to kill their victim and all are liable to be convicted under s 302 read with s 149 1935 All 362 1935 Cr. C. 362

S. 159. Affray—*contd.*

——before being convicted of affray the accused should have had clear notice as to the person or persons with whom he was fighting, that the place was a public place and that the public peace was disturbed. 1933 Mad. 843 : 1933 Cr. C. 1520.

——the offence of affray postulates the commission of a definite [illegible] merely quarrelling or abusing in a [illegible] sufficient to attract the applica- [illegible] L. J. 169.

——an open field with no compound walls, whereto the public go, no matter whether they have a right to go or not, is a public place within this sec. A place where the public are actually in the habit of going [illegible] it is not necessary that any [illegible] L. J. 598.

——a fight in a private field connected with attempts to plough the field is not a fight in a "public place" so as to constitute an offence under s. 159 1937 M. W. N. 977

S. 161. Public servant taking gratification other than legal remuneration.

——the plan of tempting and trapping the accused into bribing a public servant is objectionable A statement made to the Judge that the plff in a pending case would be willing to offer a bribe to the Judge does not amount to the abetment of an offence under s 161. 55 A 654 1933 All. 513 34 Cr L. J 623

——under the explanation 3 to sec. 108 it is not necessary that the person abetted should have any guilty knowledge or intention So the bribe-givers are guilty of the offence of abetment although they only complied with a demand made by the public servant and although the public servant had no intention to receive the money as a bribe. *above case*

[illegible] at the time [illegible] is com- [illegible] rvice with [illegible] 161, 1935 Sind 7 : 1935 Cr. C 48.

S. 171-B Bribery

——where the accused a candidate for an election, directs his agent to dissuade a rival candidate from standing for the election, b offering him money, and the latter accordingly offers a large sum money, the conduct of the accused comes within the definitio "bribery" in s. 171-B. 1938 Cal. 274

S 153 Wantonly giving provocation with intent to cause riot—*contd*

intended to apply to such provocative words or acts as do not amount directly to instigation or abetment Provocation which results in rioting may or may not amount to instigation or abetment of that offence 57 B 329 34 Cr L J 559 1933 Bom 162

S 153 A Promoting enmity between classes

——*promoting enmity between the classes what constitutes the* offence under the sec 1932 Lah 99 33 P L R 431 1932 Cr C *119 Sp B* and what *does not* 34 *Bom* L R *1642*

——criticism of British Imperialism and the Rulers of India cannot be said to be calculated to promote feelings of enmity or hatred between the classes I R 1933 Cal 252 1932 Cal 139 34 Cr L J 305 1933 Cr C 200

——the legislature contemplates that the words spoken or written [illegible] would create sufficient mischief so as to [illegible] for the prosecution further [illegible] n to promote such hatred Even if a question [illegible] se such intention must be gathered from the words spoken or written 1936 All 314 37 Cr L J [illegible] 1936 Cr C 480 Sp B

[illegible]

where the police are attacked as a whole and not [illegible] and the words used tend to bring into hatred or contempt the Govt the accused may be proceeded against for an offence under s 153 A 1934 Lah 219 1934 Cr C 450

S 157 Harbouring persons hired for an unlawful assembly

——s 157 refers to some unlawful assembly in the future Where the accused was charged *for having harboured certain persons* who were alleged to have formed an unlawful assembly in the past for the *commission of an offence* the accused could not be convicted under s 157 58 C 1401 35 C W N 720 1931 Cal 712 1931 Cr C 992 131 I C 1278

S 159 Affray

——when one person attacks and the other defends *it is legally* correct to say that the persons are fighting and the case comes under *the definition of affray the gist of the offence consisting in the terror* it causes to the public 53 A 229 1931 All 8 1931 A L J 891 32 Cr L J *1269 134* I C 834

S 177 Furnishing false information—*contd.*

——the offence for furnishing false Income-tax return should be regarded as serious one that it might have a deleterious effect upon the position of the general body of tax payers 1933 Rang 292 1933 Cr C 1123

——this sec has no application to a case in which a false statement has been made to the police by a person who was under no legal obligation or who was not legally bound to give that information 1936 All 788 1936 Cr C 1011

S 179 Refusing to answer public servant authorised to question

——a complainant is bound when examined as a witness to answer all relevant questions and is punishable for refusing to do so 1935 All 267 36 Cr L J 446

——

case and [illegible]

was dism [illegible]

be convic [illegible]

S 180 Refusing to sign statement

——if the accused refuses to sign the statement under sec 364 (2) Cr P C there can be no doubt that he is obstructing the process of the Court and that he is liable to punishment under sec 180 I P C 1935 All 652 36 Cr L J 1098

S 181 False statement on oath or affirmation to public servant

——a witness [illegible] hat in fact is incorrect but this [illegible] mere [illegible] 1933 [illegible]

S 182 False information to public servant

——the expression gives information means to volunteer information and is not intended to apply to a statement made in answer to questions put by public servant The statements of witness to police officers under sec 161 Cr P C cannot except in very special circumstances be regarded as giving information nor can be a statement of a witness called for the deft at a departmental inquiry 1937 Rang 232 38 Cr L J 980 *contra* 1936 Sind 94 37 Cr L J 870

——the word public servant sufficiently covers a police officer [illegible]

[illegible] accused it is not an illegality but is a mere error of discretion The accused person in such a case has ample opportunity to prove his case

171 G False statement in connection with an election

——where the bulk of the document contained general imputations of misconduct and not statements of fact within s 171 (g) I. P. C. the accused was liable to be proceeded against under s 500 and not s 171 (g) I P C in respect of the defamatory statements 55 M. 791 1932 Cr C 515 33 Cr L J 665 1932 Mad 511.

——general charges of misconduct are not statements of fact within the meaning of sec 171 G The statement complained of was [illegible] personal character or conduct of the complainant 1936 Mad 316 37 Cr L J 629 1936 Cr. C 303.

S 172. Absconding to avoid service of summons or other proceedings.

——this sec is not applicable unless summons, notice or order which was to be served on the accused was, in fact, in existence and capable of being served It is doubtful if an order of the M that information of the date fixed for the case be given to the party is such an order as is contemplated by the sec 1936 All 354 37 Cr L J 713 1936 Cr. C 418.

S 174 Non attendance in obedience to an order from public servant

——a M cannot try a person for an offence under sec 174 for disobedience of his summons The prohibition under s 487 Cr. P. C. is absolute and the consent of the accused is immaterial 1934 Lah 545 1934 Cr. C. 865

S 176 Omission to give notice or information to public servant by person legally bound to give it

——this section is intended to apply to parties who commit an intentional breach of obligation to report and not where the public servant has already obtained the information from other sources 1933 Lah 515 : 1933 Cr. C. 774.

S 177. Furnishing false information

——where a doctor was employed by a Municipality and the Municipality contracted with the Govt to submit *post mortem* reports, a false report by the doctor is not an offence under sec 177 as he was not legally bound to furnish information to Govt. 1934 Bom 202 35 Cr L J 1429

——a person cannot be convicted under sec 177 for furnishing false return to Income tax officer if he had not been served with a legal notice under sec 22 (2) of the Income tax Act, as without such notice he is not legally bound to furnish the return 1934 Lah 626 1934 Cr C. 964

S 182. False information to public servant—*contd.*

——there is no reason why s. 109 I. P. C. should not be applicable to cases under s. 182 I. P. C. and a man can legally be convicted under s 182 read with s. 109. 1937 All. 755.

——a person may be legally convicted under s 182 in respect of a statement made to a police officer in the course of investigation. 1933 Pat. 555 . 34 Cr. L. J. 1216

——a statement made by a witness to the police under the provisions of s. 161 Cr. P. C. is not an information given to a public servant within s. 182 I. P C. 1935 Rang 97 1935 Cr C. 306.

——in order to secure a conviction under s 182 I P C. it is necessary that the information given by the accused must have been known or believed to be false by him at the time when he gave it. 1935 Rang 97 . 1935 Cr C. 306, 1936 Sind 94 : 37 Cr. L. J 870, 1937 Pat 6 38 Cr L. J 289

——the complaint in s 195 (1) (a) Cr P C. is a public duty and responsibility and must not be mistaken for a personal privilege , and there is nothing against a successor in office of the public servant to whom information was given making the complaint under s 182 I. P. C. 1938 Pat. 83

S 183. Resistance to taking of property by lawful authority of public servant.

[illegible]

by lawful authority of a public servant, but it does not extend to acts [illegible]

S 185 Illegal purchase or bids for property offered for sale

——where the accused made a *bona fide* bid and had no intention to shirk his obl gation but owing to circumstances beyond his control, he was subsequently unable to deposit the earnest money, he cannot be deemed to be guilty under s 185 1934 Oudh 186 35 Cr L J 789 1934 Cr C 582.

S 186 Obstructing public servant in discharge of public functions.

——resistance to *naib nasir* holding warrant of attachment is offence under sec 186 I P. C though the rules framed by the C regarding attachment were not strictly followed. 13 Pat. L. T. 1932 Pat. 276.

S. 182. False information to public servant—*contd.*

when he is called upon to enter upon his defence. 37 C. W. N. 368 · 60 C. 656 · 1933 Cal. 532 · 34 Cr. L J. 1059, 58 C. 1065 · 35 C. W. N. 378 . 32 Cr L. J 1241 : 1931 Cal. 634 (14 C. 707 F. B and 14 C. W. N. 765) *Explained*

——giving false information to the police that a buffalo is missing does not justify a conviction under sec 182 I. P. C. as it is not a report of a cognizable offence nor does it call for any action on the part of the police. 1932 Pat 170 135 I. C. 447 I. R 1932 Pat. 111 · 33 Cr. L. J. 317 : 1932 Cr. C. 311.

——in a case under sec 182, the question is not whether the false [illegible] it was of such a nature [illegible] e use of their lawful [illegible] 1936 All. 313 37 [illegible] 479.

——sec 182 I. P. C is a general section relating to false infomation of a general kind given with the intention of making public servant do what he would not do otherwise, and which has done or caused injury to any person [illegible] 1134.

——the order for issuing summons to the petitioner under secs 211 and 182 I. P. C. without dismissing his *naraji* petition against the police or after dismissing his *naraji* petition without an inquiry, is invalid. 36 C. W. N. 15 . 1932 Cal 383 33 Cr L J. 514 *1932* Cr. C. 312, similar case 36 C. W. N. 794 33 Cr. L. J. 724 *1932* Cal. 550, 37 C. W N. 309 1933 Cal 614 34 Cr. L. J 1077, 35 C. W. N. 1310.

——a M. has no jurisdiction to order an inquiry by the police and to sanction the prosecution of the complainant under ss. 182 and 211 I P. C., on the basis of the police report, when he has not examined the complainant in oath 1935 All. 745 36 Cr. L. J. 860, 1935 All. 981 · 1935 Cr C. 1200.

——for the purpose of jurisdiction an offence under s. 182 I. P. C. is committed at the place where the false information is given to the public servant by letter and as soon as the letter reaches the public servant. 1932 Cr C. 408 I R. 1932 Mad 379 : 137 I C. 333 1932 M. W. N 451 33 *Cr* L J 452.

——where a petition was addressed to the Dt M. against certain conduct of the police bearing necessary court-fee and containing specific allegation of maltreatment and the order of the Dt. M. *on it* was "file," held that petition was in every respect a complaint which should be disposed of according to law without which the petitioner could not be prosecuted under s. 182 I. P. C. 1937 Sind 209 38 Cr L J 951.

S. 186. Obstructing public servant in discharge of public functions—*contd.*

——a person who deliberately places a cycle in front of a constable preventing him from dealing with the offender commits "obstruction" within s. 186 1936 Nag. 86 37 Cr. L. J. 587

——when a bundle contains dutiable articles it is when in transit liable to terminal tax and refusal to show the bundle to an Octroi officer for inspection constituted an obstruction to the discharge of public functions 1935 Sind 245 1935 Cr. C. 1308.

——the obstruction to a Sanitary Inspector not duly authorised to perform the duties under ss 10 and 12 of the Bengal Food Adulteration Act, though not punishable under ss. 21 and 12 (2) of the Act, is punishable under s. 186 I P C as he is a public servant. 59 C. 234 36 C. W N. 134 1932 Cal 462 33 Cr. L J 521 1932 Cr. C. 452.

S 187. Omission to assist public servant when bound by law to give assistance.

——the word 'assistance' in part 1 of s 187, Penal Code is *ejusdem* [illegible] half of [illegible] ve to a [illegible] xecution [illegible] ttending [illegible] gislature [illegible] n But again it is the refusal to attend and witness the search that had been made penal and not the signing of the search list. S 103, Cr P. C does not cast any obligation or legal duty on the witness to sign the search list By refusing to sign the search list the search witness does [illegible] t is not [illegible] refused [illegible] il to sign a search list by a witness to search cannot be deemed to be an offence under s. 187 I P C. 1938 Pat 403 F B, 26 Mad 419 F B *approved*, 1920 Mad 286 *Expl*

——where the arrested person refused to move and the assistance of the accused was demanded but refused, he was guilty of an offence under s. 187 I P C 1932 All 506 1932 Cr C 594 I R. 1932 All 527 139 I C 106 33 Cr. L J 736

S. 188. Disobedience to order duly promulgated by public servant.

——where there is an immediate apprehension of breach of the peace between two unlawful assemblies, the officer in charge of a public station may order either or both of the two of the assemblies to disperse, and failure to obey such order constitutes an offence under s. 188 1936 All 534 37 Cr. L. J. 866

——the validity of a final order passed under sec. 133 Cr. P. C. cannot be questioned at the trial of the accused to disobedience of *that*

S 186. Obstructing public servant in discharge of public functions—*contd.*

——Or 37, R 5 and form No 5 of App. F. of C. P. C. require that notice to furnish security and to show cause against it and the order for conditional attachment of the property should be issued simultaneously and in one and the same form, otherwise the warrant is illegal and resistance to it is not an offence under s 186. 1933 All. 759 . 34 Cr. L. J. 1211.

——where the warrant the exec ... illegal,

... obstruction, but threats of violence made in such a way as to prevent ... amount to an ... an aggressive ... J 1211 · 1933 Cr C. 1324.

——it is not necessary that physical force must be proved to have been used to constitute obstruction. If there is sufficient indication that force would be used if the officer persists in executing the warrant of attachment, that is quite enough to constitute the obstruction 1937 Pat. 633 18 Pat L T 783

——obstruction or no obstruction is essentially a question of fact which depends on the facts and circumstances of each case and mere threats of violence may not, in all cases, be sufficient evidence of obstruction. 36 C. W N 1038 · 1932 Cal 871 1930 Cr. C 893, 1932 Rang. 21 1932 Cr. C. 111 33 Cr. L J. 175.

——it is necessary that it should be found as a fact that the goods sought to be attached are the goods of the person whose goods the officer is directed to attach. It is sufficient if the officer believes in good faith that the goods are of the person whose goods he is directed to attach. 1937 Pat. 633 18 Pat. L. T. 783.

——where an executing officer attempts to seal up the premises of a third party and not of the judgment-debtor and is resisted by that third party he commits no offence. 11 Pat. 493 1932 Pat. 279 1932 Cr. C 723 I R 1932 Pat. 257 139 I. C. 834.

——this section does not pre suppose the existence of a legal warrant There is no duty laid upon bill collectors and other persons to make independent inquiries regarding the validity of the warrant 1938 Mad. 659, (1924 Mad. 895 and 25 Mad 719) *dist* , 1925 Mad 613 *Ref* ...

traffic ...
mean ...
word "obstruction" does not mean "physical obstruction" and even threatening language is sufficient to constitute the offence. 1938 All 118, 1933 All. 759, *Rel. on.*

S 188 Disobedience to order duly promulgated by public servant—*contd*.

——breach of lawful order issued by a Police Commissioner under s 62 A (4) Calcutta Police Act and s 93-A Suburban Police Act is an offence under s 188 58 C 1303 35 C W N 716 132 I C 174 1931 Cal 410 32 Cr L J 844 I R. 1931 Cal 558

S. 189 Threat of injury to public servant

212 1936 Cr L 191

——a threat to the Revenue Inspector not to enter by any particular door is not an offence under s 189 1933 M W N 1271

S 191 Giving false evidence.

——the words in sec 191 are very general and do not contain any limitation that the statement made shall have any bearing upon the matter in issue A case comes within this sec if the false evidence is intentionally given 1933 All 318 34 Cr L J 686 1933 Cr C 484

——on the language of ss 191—193 it cannot be held that the accused is in any more privileged position than an ordinary person The ... ecial protection is intended ... an escape from the penalty ... of being accused persons.

S 192 Fabricating false evidence

——it is possible that the offence of fabricating ev... capital conviction ... accused to be gu... and if the offence c... But if one set of al... other alleged consp... to be true and it is ... difference ... concert between the two sets is so far weakened ... 37 C W. N 584 57 C L J 177 1933 P. C ... 322 P. C

——*Quære*: whether to enter a false recor... be said to be fabricating evidence at all spe... Cr. P C appear to negative the admissibility ... save for the purpose of contradicting a w... recorded in writing or of contradicting the po... **P. C** *case*.

S 188 Disobedience to order duly promulgated by public servant—*contd*

order under sec 188 I P C 60 C 1336 1934 Cal 242 35 Cr L J 778 1934 Cr C. 364

——an order under sec. 144 Cr P. C must be *absolute and definite* in terms The sec does not contemplate a conditional order to be made absolute later on An order "either to refrain from doing any particular act or to show cause, if any, against the said order" is not an order which comes under sec 144 and breach of such an order or an imagined injunction contained in such an order is not punishable under sec 188 I P C 40 C W. N 640 37 Cr L. J 696 1936 Cal 259 63 C L. J 137

——a M. is only entitled under sec. 144 Cr P. C to make a restrictive order preventing the opposite party *from doing* an act but it does not enable him to make a *mandatory order directing* the opposite party to do some act consequently that party is under no obligation to obey such order and disobeying such order is not punishable under sec. 188 I P C. 38 C W N 115 1933 Cal 724 34 Cr L J 1192 *1933 Cr C. 1274*

——in order to satisfy the requirements of sec 188 there must be proof that a person having knowledge of the order and being thereby directed to abstain from a certain act has disobeyed such direction 1933 Sind 93 34 Cr L J 362

[illegible] individual directing him to [illegible] can be said to be [illegible] W N 792 1932

[illegible] dience of an order [illegible] tion must prove that [illegible] the order but the [illegible] Cr L J 639 1935 Cr C 570

——if an order under sec 144 Cr P C cannot be served in the manner provided for service of summons, then and only then can a proclamation under s 134 (2) be resorted to In this case there was no due promulgation of the order and the accused could not be punished under sec 188 39 C W N 141 60 C L J 474 1935 Cal 251

——sec 144 Cr P C confers no power on a Magistrate to pass a mandatory order directing a party to do some act, such an order is illegal and disobedience of the same is not an offence under sec 188 I P C. 39 C W N. 1053 61 C L J 579

——Ordinance No 5 of 1930 and the Notification thereunder making the offence under sec 188 I P C cognizable and non bailable does not get rid of the requirements imposed by s 195 Cr P C 58 C 971 55 C L J 461 35 C W N 257 1931 Cal 122 1931 Cr C 254 32 Cr L J 511 I R 1931 Cal 369

S. 193. Punishment for false evidence—*contd.*

——in recording statement under s. 164 Cr. P. C. a M. is empowered to administer oath or solemn affirmation to the deponent and the statement so recorded may be the subject of a charge of perjury. 1933 Lah. 321 : 1933 Cr. C. 564 . 34 Cr. L. J. 469.

Cr. L. J 917 . 144 I. C. 1011 (Pat)

——a promisory note was entrusted to a Vakil's clerk for filing

under s 471 I. P C, which the accused not being a party or witness to the suit, would not require a complaint under s 195 (1) (c) Cr P. C 1933 Mad 413 34 Cr. L. J 800, 55 M 343 *fol*

——where the accused was charged under ss 193 211, 218 and 220

——if on taking the deposition as a whole it is found that *certain* false statements were made with the knowledge that they were false, the offence under s 193 I. P C., is established, although the false statements may not bear directly on the material issue before the Court The latter is a consideration relevant only to the question of sentence 42 C. W N 31, (26 A. 509, 16 W. R. 37, 19 W R 69) *Ref*

——it is inadvisable to prosecute under s 193, if a witness, reverts to the truth in the course of a trial more specially when the

C 1147
giving false
te weeks he
rrect certain
was proper
application to
1937 Sind

——where upon a police report against the headman of a village the M held an enquiry during the course of which a witness made a false statement, a conviction under s 193 I P. C. was not sustainable as the M. had no power to administer oath to the witness in such executive matters 1934 All 988 1934 Cr. C. 1306

S. 192. Fabricating false evidence—*contd.*

——an entry would be a false entry or a statement in a record or [illegible] does either by reason of some [illegible] truth. [illegible] hing to [illegible] or on the statement as occurring in a document. 38 Cr. L. J 700 1937 Cal 42.

——an officer in charge of a thana is not bound by law to record in verbatim what he was told by the informant. It is sufficient if he records the substance of the information. Where it is not proved that the officer had any motive in the omission of recording a part of the information and it is also not proved that he had intended that the false entry might appear in evidence in a judicial proceeding at the time of [illegible] *above case.*

[illegible] entry or [illegible] e judicial [illegible] A mere [illegible] l in some [illegible] ambit of [illegible] as would lead to the entertainment of an erroneous opinion touching any point material to the result of such proceeding. 40 C. W N. 313

S. 193 Punishment for false evidence

——an accused can only be guilty under s 193 if he had the intention of fabricating evidence in order that it should appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant or an arbitrator 62 C 666 1935 Cal 304 1935 Cr. C. 491.

——the intention of the accused is an essential ingredient in the cont [illegible] I 390 [illegible] ants to a [illegible] 36 Cr L. J [illegible]

——a hearsay statement of a witness cannot be the basis of a [illegible] 37 Cr. L J. 1043

[illegible] on oath knowing it to [illegible] r perjury 1936 Mad

[illegible] e and should not be lightly made or based upon a mere isolated answer in a Court-proceeding without giving notice to the accused and without proper exami[illegible]

[illegible] tigatio [illegible] procee [illegible] contra 33 Cr L J 413 1932 Lah 254.

S. 193. Punishment for false evidence—*contd.*

——in recording statement under s 164 Cr. P. C. a M. is empowered to administer oath or solemn affirmation to the deponent and the statement so recorded may be the subject of a charge of perjury. 1933 Lah. 321 . 1933 Cr C. 564 34 Cr. L J. 469

——in a prosecution under s 193 it is incumbent on the prosecutor to show first that the statement made by the accused was false, and secondly that they knew it or believed it to be false or did not believe it to be true at the time they made the statement 1938 Pat 145. 34 Cr. L. J 917 . 144 I. C 1011 (Pat)

——a promisory note was entrusted to a Vakil's clerk for filing suit The suit was filed after limitation period and an endorsement of payment was alleged to have been made by the clerk to cover up his own fault. No complaint had however been made by the Court which [illegible]

to the suit, would not require a complaint under s 195 (1) (c) Cr. P. C 1933 Mad. 413 34 Cr. L J 800, 55 M. 343 *fol*

——where the accused was charged under ss 193 211, 218 and 220 [illegible]

——it is inadvisable to prosecute under s 193, if a witness, reverts to the truth in the course of a trial, more specially when the witness was not a willing witness 1934 Sind 155 1934 Cr C 1147

——a witness who deliberately deceived the Court by giving false evidence was prosecuted under s 193 I P C After some weeks he applied to the Court to be examined again so as to correct certain incorrect statements made by him held that the prosecution was proper as he left the Court under the impression of a lie and his application to correct some of his statements exceeded reasonable limits 1937 Sind 116 38 Cr L. J 873

——where upon a police report against the headman of a vill the M. held an enquiry during the course of which a witness false statement, a conviction under s 193 I P C was not s as the M. had no power to administer oath to the wit executive matters. 1934 All 988 1934 Cr C 1306

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——an officer in charge of a thana is not bound by law to record in verbatim what he was told by the informant. It is sufficient if he records the substance of the information. Where it is not proved that the officer had any motive in *the omission of recording a part of* the information and it is also not proved that he had intended that the false entry might appear in evidence in a judicial proceeding at the time of making the entry, he could not be convicted under s. 193. *Above case.*

——s 192 applies only if it is proved that the false entry or ... some judicial ... A mere ... in some ... ambit of ... as would lead to the entertainment of an erroneous opinion touching any point material to the result of such proceeding. 40 C. W. N 313

S 193 Punishment for false evidence

——an accused can only be guilty under s 193 if he had the intention of fabricating evidence in order that it should appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant or an arbitrator 62 C 666 1935 Cal 304 1935 Cr. C. 491.

—— ... contrib ... to an ... Cr L. J 385, 1934 Cal 838 1934 Cr C 1359

——a hearsay statement of a witness cannot be the basis of a prosecution under s 193 I. P. C 1936 Lah. 828 37 Cr. L J. 1043

——any body who makes a false statement on oath knowing it to be false makes himself liable to be prosecuted for perjury 1936 Mad 350 37 Cr. L. J. 557.

——the charge of perjury is a serious charge and should not be lightly made or based upon a mere isolated answer in a Court proceeding without giving notice to the accused and without proper examinat ... tigatio ... procee ... *contra* 33 Cr L J 413 1932 Lah 254.

S. 199. False statement made in declaration which is by law receivable in evidence—*contd.*

——an affidavit which is inadmissible on the ground of some informality is still a declaration within ss. 199 and 200. 1933 Pat. 513. 34 Cr. L. J. 912 : 1933 Cr. C. 1162.

——swearing to an affidavit in support of the service of notice merely repeating the endorsement made by a person receiving the notice constitutes no offence 17 Pat. L. T. 692.

——the statements in a petition of insolvency are very analogous to statements made in ordinary civil pleadings. But they certainly do not constitute evidence which is bound to be accepted by the Court In [illegible]

S. 201 Causing disappearance of evidence of offence or giving false information to screen offenders

——sec. 201 I P. C does not appear to be limited to giving false information to police 1937 Sind 28 . 38 Cr. L. J 373.

——when the word "offence" is used in s 201 it does not contemplate that the accused should know the particular sections of the Penal Code. What the Court has to decide is what offence the accused knew or had reason to believe, had been committed When a *woman is found* dead in the house of the accused [illegible]

——it is not necessary for a conviction under sec. 201 that the offender (murderer) *must be named or identified* or convicted of the principal offence. If it is clear that the information was given by an accused with the purpose of screening the offender from legal punishment then the provisions of sec *201 are to that extent* satisfied The knowledge as to who the offender is may not be available to the prosecution. 1937 Sind 28 38 Cr L J 373

——The proper avenue of approach is, first and foremost, to consider whether the offence under s 302 I P C, has been made out If so, that is an end of the matter. If, on the other hand, the case under the sec. is held not proved, then, and only then, would it be proper to consider whether an offence under s 201 I P C. has been established. 18 Lah. 371 : 1937 P C. 179 41 C W N 805 : 38 Cr. L. J. 573 P C.

——to constitute an offence under s 201 there must be *disappearance* of some evidence of commission of an offence Where the offence committed was murder and the evidence that was caused to disappear was the fact that the corpse was lying at a particular house,

S 193 Punishment for false evidence—*contd.*

——if the charge is that the evidence has been fabricated in connection with proceedings which are only contemplated by the accused the onus is on the Crown to prove that proceedings were so contemplated 56 B 213 1932 Bom 185 137 I C 134 1932 Cr C 244 33 Cr L J 386

——when there is charge and countercharge the Court should not act upon affidavit only, inquiry should be made under s 476 Cr P C 58 C 1211 53 C L J 184 1931 Cal 344 1931 Cr C 408 35 C W N 690

——the English common law rule that the testimony of a single witness is not sufficient to convict a person for perjury does not apply to Indian Courts which are bound by the Statute Law 53 A 598 1931 All 362 32 Cr L J 780

S 196 Using evidence known to be false

——an offence under sec 196 I P C can be held to have been committed only if it is shown that the evidence which the accused used or attempted to use as true or genuine was in existence at the time Though a person summons a witness to produce in Court a document alleged to be false but the witness never produces it and it is not known whether that witness was in possession of any such false document there can be no prosecution under sec 193 1937 Pat 467 38 Cr L J 1011

——the use of evidence contemplated in s 196 is use by a party or witness and not use by the Court 1938 Pat 83

S 197 Issuing or signing false certificate

——sec 198 must be read along with sec 197 and the certificate which is referred to in sec 198 must manifestly be one which is either 'required by law to be given or signed or is by law admissible in evidence' A certificate granted by Municipal Chairman, signed by him and based upon an entry in the Death Register maintained by the Municipality does not fulfil either of these requirements and is not a certificate 1937 Pat 467 38 Cr L J 1011

S 199 False statement made in declaration which is by law receivable in evidence

——sec 199 does not apply to applications for execution of decrees containing false averments 1934 Oudh 65 35 Cr L J 390, 10 B 288 *fol*

——the offence contemplated in sec 21 of the Special Marriage Act (1872) only deals with the declaration of a profession of want of belief in the Christian Jewish, Hindu Mohamadan Parsi, Buddhist Sikh or Jain religion at the time when the declaration is made The declaration does not amount to an abjuration for all purposes of the personal law of the declarant but merely as a statement for purposes of the Act itself 1934 Oudh 155 35 Cr L J 744 1934 Cr C 499 (49 C 1069 31 C 11 1928 Bom 74 16 A 212) *Ref.*

S. 206. Fraudulent removal or concealment of property to prevent its seizure

——"taken" in s. 206 means "seized" or "taken possession of". The accused who was the decree-holder executed his decree and the bailiff attached certain quantity of grain and some livestock and entrusted them to the accused for which he executed a *jimmapatra* undertaking to produce them whenever called upon by the Court. At the sale the accused failed to produce certain heads of livestock, held that the offence committed by the accused was under s. 406 I P. C and not under s. 206 and therefore no complaint of the Civil Court was necessary. 1937 Bom. 46 · 38 Cr L. J. 272.

——the word "fraudulently" in s 206 I. P. C. cannot be interpreted as meaning nothing more than "dishonestly". The two words do not mean exactly the same thing A dishonest act is not necessarily a fraudulent act The elements which make an act fraudulent are first, deceipt or an intention to deceive and in some cases mere secrecy. 1937 Mad 713 . 1937 M. W N. 462.

S. 209 Dishonestly making false claim in Court

[illegible]

under s. 209 I P C must be decided like any other question of fact on the evidence. 1936 All 164 37 Cr. L. J 420

S. 210. Fraudulently obtaining decree for sum not due.

——the accused held a decree against the complainant and the latter made certain payments under the decree The accused however fraudulently concealing the payments from the Court, obtained further execution of the decree and obtained warrant of arrest, whereupon the complainant filed a complaint under s 406 I P C, held that the offence alleged was primarily one relating to the administration of justice under s. 210 I. P. C. and the proceedings must be quashed 1936 Sin 123 : 37 Cr. L J 1007.

S. 211. False charge of offence made with intent injure.

——to say that a criminal prosecution under s. 211 cannot in respect of a complaint which is partly false and partly true is

S 201. Causing disappearance of evidence of offence or giving false information to screen offenders—*contd.*

held, that there was no evidence of the commission of the offence of murder and conviction under s 201 was not sustainable. 37 C. W. N. 348

——a person who secretly buries the headless body of man just murdered [illegible]

——no conviction under s 201 can be had against an accused person who has done nothing more than to cause to disappear the evidence of suicide 1934 Sind 139 1934 Cr. C 1070.

——where an offender is held not to have committed the murder, [illegible] committed, [illegible] Cr. C. 1070. [illegible] are that he [illegible] co-accused fatally stabbed, and that he took part in tying the deceased with a rope [illegible] constitute an [illegible] 96 [illegible] under s 201 [illegible] r L. J 814 [illegible]

——before there can be a conviction under s 201, it must be proved that an *offence*, the evidence of which is caused to disappear has actually been committed 1932 Cal 850 1932 Cr. C, 881 33 Cr. L J. 657.

——when a person directs two others to dispose of the body of a person who has been murdered by throwing it in a jungle, threatening to shoot them if they do not do so and accompanies them for a short distance with a pistol and then leaves them, and those persons then dispose of the body according to his directions, he is also guilty under s 201. The mere fact that he is not present makes no difference 1938 All. 91

S 205. False personation for purpose of act or proceeding in suit or prosecution

——in all material parts the wording of s 82 (c) Registration Act, is identical with that of s 205 I P. C. and under the latter section it is not enough to prove merely the assumption of a fictitious name It is essential to prove further that the assumed name was used as a means of falsely representing another individual 1935 Mad 913 1935 Cr. C 1254

——receiving process of Court issued under s 158 B T. Act as servant of the addresee and signing acknowledgment receipt as such servant is *not false* personation under s. 205. I. P C 17 Pat L. T. 691

S 211. False charge of offence made with intent to injure—*contd.*

against the latter and without setting the criminal law in motion. 59 C 334 33 Cr L J 631 1932 Cal 511 1932 Cr. C. 410.

——a person who applies to a M. for an order under s. 144 Cr P. C, against another person institutes a criminal proceeding against that person within s. 211 1933 M W. N 1263.

——a witness who gives false evidence does not thereby make himself liable under s 211. 1936 Lah 828 37 Cr L. J 1043

——where a complaint of a cognizable offence is made by a person other than the accused, any statement made to the Police officer by the accused after that complaint had been received, however false it might have been, is a statement made in Police investigation and cannot be made the foundation of prosecution under s 211, because it is not this statement which set the law in motion. 1936 Mad. 160 · 37 Cr L.J 357 1936 Cr C 163

——ingredients of offence under s 211 1936 Rang 473 1936 Cr C 963

——when a person does not confine himself to reporting what he knew of the facts, stating his suspicions and leaving the matter to be [illegible]

——an order for issuing summons to the petitioner under ss 182 and 211 I P C without dismissing his *naraji* petition against the police is invalid 36 C W. N 15 33 Cr. L. J 514 1932 Cr C 312

——investigation by a police is not a criminal proceeding against any person 1931 Nag. 134 1931 Cr C. 721 27 N L R 275 133 I C. 398 32 Cr L. J 1 **F B**

——ordinarily [illegible] given an opportunity to show cause before he is [illegible] ted under s 211 3, C W N 1210 But the [illegible] d is illegal and need not be set aside if he [illegible] rtunity of proving his allegation first 1934 Rang [illegible]

——in charg [illegible] delay should not be tolerated and such delay al [illegible] reason for refusing to proceed with the complaint [illegible] Cr C 1259

[illegible] no sanction [illegible] rt is necessary to the filing [illegible] mplaint un [illegible] ceedings before a Court has [illegible] the filing [illegible] s 211 it cannot be filed at [illegible] by the [illegible] conduct of the original [illegible] 193, to [illegible] 44 C 970, *Dist* [illegible] re a per [illegible] against two persons he [illegible] one act [illegible] lse charge and he there [illegible] only [illegible] pite of the fact that he [illegible] agai [illegible] 21 35 Cr L J 1259

S 211. False charge of offence made with intent to injure—*contd.*

the matter a little too broadly. In a prosecution under s. 211 it should be considered whether the complaint is substantially true and what is false is a mere fringe to the complaint or whether the substantial complaint is false and what is true is a mere fringe or in other words a mere accessary circumstance 1937 Pat 84 38 Cr. L J 462

——in order to substantiate a charge of abetment of an offence under s. 211 it must be proved that the abettor was aware of the falsity of the complaint. 1937 Pat. 84 38 Cr. L. J. 462.

——in order to constitute an offence under s 211 the false charge must be made with the intention of setting the criminal law in motion. A complaint made to the superior officer of police against a police constable falsely charging him with a non cognizable offence does not fall within the purview of that sec. as it is neither made to a Court nor to an officer who has power to investigate and send it for trial. 1937 Lah. 624 38 Cr L J 1070

——a distinction must be drawn between the complainant and his advocate in considering if both are guilty of an offence under s 211 The advocate is his client's advisor and must act according to his instruction. It is his bounden duty to put into the complaint the material facts upon which the complaint is based and not wilfully, by acts or omission, to deceive the Court 1937 Sind 193 38 Cr. L. J. 1002.

——meaning of the expression "falsely charge." False accusation against subordinate Judge that he has committed offence under s 196, made to the Dt Judge in order to obtain sanction for prosecution amounts to making of charge within the meaning of sec. 211 I. P C. 1938 Pat. 83

——a false accusation to the police by a person who was not at all present at the alleged occurrence complained of, which is found to be false, is an offence under s 211 I P. C. 36 Cr. L. J 1289 (Sind).

——a petition sent by a person to a Dt Judge conveying and intended to convey allegation against a subordinate Judge, praying for sanction under s 197 Cr P. C, to prosecute the latter under s 196 I. P C., for corruptly using the evidence of a witness as true, knowing it to be false, must be held to be so sent with the intention and object of setting the criminal law in motion and amounts to a charge under s. 211. 16 Pat. 571 1937 P. W. N. 937.

——statements made in the course of an investigation under Chap XIV. Cr P. C. are not "charges" under s 211 I. P. C. 61 M L. J 858 1931 M. W. N. 1138 34 L. W. 860, (1 Weir 193, 31 M 506) *Ref.*

——petition to Superintendent of Police to protect the petitioner from extortion by Police Inspector does not amount to a false charge as the prayer could be granted by means of some departmental action

S 211. False charge of offence made with intent to injure—*contd.*

against the latter and without setting the criminal law in motion. 59 C. 334 33 Cr L J 631 1932 Cal. 511 1932 Cr C. 440

——a person who applies to a M. for an order under s. 144 Cr P. C, against another person institutes a criminal proceeding against that person within s. 211. 1933 M W. N 1263

——a witness who gives false evidence does not thereby make himself liable under s 211. 1936 Lah 818 37 Cr L. J. 1043

——where a complaint of a cognizable offence is made by a person other than the accused, any statement made to the Police officer by the accused after that complaint had been received, however false it might have been, is a statement made in Police investigation and cannot be made the foundation of prosecution under s 211, because it is not this statement which set the law in motion. 1936 Mad. 160 37 Cr. L.J 357 1936 Cr C 163

——ingredients of offence under s. 211 1936 Rang 473 1936 Cr. C. 963

——when a person does not confine himself to reporting what he knew of the facts, stating his suspicions and leaving the matter to be further investigated by the Police, but definitely alleges his belief in the guilt of certain persons and insists that Court proceedings should be take against them, it amounts to a charge within s 211. 1934 Rang. 21 35 Cr L. J. 1259

——an order for issuing summons to the petitioner under ss 182 and 211 I P C. without dismissing his *naraji* petition against the police is invalid 36 C W N 15 33 Cr L J 514 1932 Cr C 312

——investigation by a police is not a criminal proceeding against any person 1931 Nag 134 1931 Cr C 721 27 N. L R. 275 133 I. C. 398 32 Cr L J 1009 **F B**

——ordinarily a person should be given an opportunity to show [illegible]

commits only one act and the act is in laying false cl[illegible] fore, commits only one offence and not two inspite of [illegible] made the charge against two persons 1934 Rang 21

S 215 Taking gift to help to recover stolen property etc.—*contd*

Hence, a person taking money for pointing out such bullock is guilty under sec 215. 1938 All 440, 1914 Lah. 551, 1932 Pat. 241 and 1928 All. 22 *dist.*

——the knowledge of the offender is not a necessary ingredient of the offence under s. 215 It may well be that a person who receives

f his investi-

lead to the

nation from

hat he used

1938 All.

——the burden of proving under sec 215 that the accused person used his best endeavours or the means in his power to cause the offender to be apprehended and convicted of the offence is upon him 1938 All. 440 1933 Cal 599 *Rel on*

S. 217. Public servant disobeying direction of law to save person from punishment.

——as in the case of a charge under s 201 I P C. it is not necessary for a conviction under ss. 217 and 218 that an offence had already been committed. The knowledge of the accused that he was likely by his act to save a person from legal punishment is sufficient and it can be inferred only from the circumstances of the case 1932 Cal 850 1932 Cr. C 881.

S 218. Public servant framing incorrect record

——the question under sec 218 is not whether the accused will be

but whether he made the

or knowing to be likely

he fact therefore that the

no ground for exculpating

1938 Mad 595

——false entrv by patwori is an offence under this sec

935 All. 968 1198.

to apprehend on the part

d to arrest a man

pprehend him and

that he did it

His the man to

he ive must be

apprehend

1936 All

S 223 Escape from confinement or custody, negligently suffered by a public servant

——under sec. 223 it must be shown that there was negligence on the part of the public servant who is accused of the offence and that the [illegible]

prosecution 40 C W N 01

S 224 Resistance or obstruction by a person to his lawful apprehension

——resistance to arrest under invalid warrant constitutes no offence 1932 Pat 171 138 I C 844 I R 1932 Pat 190 33 Cr L J 706 1932 Cr C 347 13 Pat L T 135

——it is essential for conviction under ss 224 225 and 353 I P C. that the prosecution should show that the apprehension or arrest was lawful in every way *Above case*

——a warrant signed by a Magistrate duly empowered in that behalf during the absence of the Magistrate who took cognizance of the offence and directed the issue of warrant is valid and resistance to it is punishable 1932 Pat 175 1932 Cr C 351 13 Pat L T 167

——the provisions of the Cr P C regarding arrest in execution of a warrant do not apply to the case of an arrest by a police constable who has not the warrant of arrest with him 1936 Pat. 249 37 Cr L J 318 1936 Cr C 273

——a village chowkidar is a police officer under the Chota Nagpur Rural Police Act 1914 entitled to receive in custody an arrested person under sec 59 Cr P C 1932 Pat 214 13 Pat L T 321 I R 1932 Pat 171 1932 Cr C 495

[illegible]

[illegible]

S 225 Resistance or obstruction to lawful apprehension of another person

——ss 225 and 332 are to be read with s 149 Where the common object of an unlawful assembly is not to commit grievous hurt but only to release a person from arrest and grievous hurt is caused but it is not known by whom it is caused conviction of all must be only under s 332 and not under s 225 1933 Lah 159 34 Cr L J 679.

S 225-B Resistance or obstruction to lawful apprehension or escape or rescue not otherwise provided for.

——although in cases under sec. 225-B. the proper person to make the complaint is the officer from whom the escape or rescue has been effected, still a complaint by another person aware of the facts is not a nullity. 1933 Lah 884 1933 Cr C. 1178.

——where a person after arrest by the bailiff refused to accompany him but sat on the ground his action is a mere passive one and does not constitute an attempt to escape. 1933 Lah 128 34 Cr L. J 632

——the order under Or. 21, R 40 C P C need not be in writing and when the Court acting under the proviso to Rule 40 (5) directs the jt-dr, when arrested to pay detention batta for two days, he is in custody of the officer and if he escapes during that period he is guilty under s 225-B. 1933 Mad. 278 34 Cr L J 284

[illegible]

206 35 Cr L J 782.

——omission to mention the name or description of the person to whom the warrant is issued for execution makes the warrant invalid and it is immaterial that the person who is arrested is unable to read the warrant and has no knowledge whether the warrant is or is not properly filled. 1932 All. 692 1932 Cr C. 940

——although under Or 21, R. 37 C P C. the Court might have acted injudiciously in issuing a notice and a warrant at the same time yet when the warrant is not defective in form it cannot be resisted 1932 Pat 315 13 Pat L T 502 1932 Cr C. 853 11 Pat 743, 18 C. W. N 548, *fol*

S. 227. Violation of condition of remission of punishment

——under s. 227 it is for the Court to decide whether a conditionally released prisoner had violated the conditions on which remission was granted to him and until he has been found guilty under s 227 it is not for the jail authorities to say that he had committed an offence. 1933 Rang 28 : 34 Cr L J 447

S 228. Intentional insult or interruption to public servants sitting in judicial proceedings.

——in order to bring a case under sec 228 I. P C and sec 480 Cr P C it must be shown that the accused intentionally offered an insult to the Court When an assessor appeared in improper dress a stated that he had no intention to insult the Court he was not g under s 228 as there was no rule as to his dress 1933 Bom. 478 : Cr. C 1552

S. 228. Intentional insult or interruption to public servants sitting in judicial proceedings—*contd.*

——where the order of the Court was not to give a minor girl in [illegible]

——where in an application for adjournment for transfer, the [illegible]

S. 232. Counterfeit of Queen's coin.

——where two accused were charged under ss 109, 232, 235 and 243 I. P. C., but the facts found were that the first accused with the help of the second surreptitiously introduced the counterfeit coins, so [illegible]

Mad 711 : 1937 M. W. N. 551.

S. 235 Possession of instrument or material for the purpose of using the same for counterfeiting coin.

——*mere physical possession of instruments or material of counter* feiting are not sufficient, the prosecution must prove intention of using the same. 1938 Mad 393.

——in order to fix the responsibility upon any member of the family except the head of it, it is necessary to prove that possession and *control* were with the subordinate member alone or with him also This rule applies in the case of a wife living with her husband [illegible] implements and materials [illegible] were to be [illegible] kind of posses [illegible]

——where during a raid by a police party a tin box was found in a room containing a number of articles which are used for counterfeiting coins, but one other person except the accused was also living in the room, held, that it could not be said with certainty that the room was in the possession of the accused alone. 1935 Lah. 39 : 1935 Cr. C. 39

S. 239 Delivery of coin possessed with knowledge that it is counterfeit.

S 240 Delivery of Queen's coin possessed with knowledge that it is counterfeit.

——the mere fact that the accused delivered certain coins to certain persons knowing that they were counterfeit is not enough for conviction under s. 240. The knowledge that the coins were counterfeit at the time the accused became possessed of them has also to be established But the conviction can be altered from s 240 to s 241. 1936 Nag 242 1936 Cr C. 1036

S 243 Possession of Queen's coin by person who knows it to be counterfeit when he becomes possessed thereof

——in course of a search the accused was found in possession of counterfeit coins kept by him under lock and key in a wooden box The coins were part of the estate's property and purchased by the accused at an auction-sale openly and it was not shown that any attempt had been made to pass the coins to other persons as genuine, held, that under such circumstances it could not be held that the accused was in possession of the coins fraudulently or with intent that fraud may be committed and therefore no charge under s 243 was sustainable 1936 Pat 533 37 Cr L J 1154

... of being in ... ything of that ... ouse and if it ... had put the incriminating articles in the place where they were. 1936 All 630 37 Cr L J 551

——the mere fact that the accused resided in the house in which the counterfeit coins were found without showing that the accused was aware of the existence of those coins is not sufficient to justify conviction under s 243 1933 M W N 222

——where certain silver pieces of the size of a rupee were found along with counterfeit rupees all bearing the same year and it was shown that all the coins were concealed under *bhusa* in a locked room of which the accused had the key, held that s 114 Evi Act created a presumption of guilt under s 243 1933 Oudh 85 34 Cr L J 545

S 263. Erasure of mark denoting that stamp has used.

——for an offence under the first part of sec 263 it is to prove fraud or an intent to cause loss to Government,

S. 263 Erasure of mark denoting that stamp has been used—*contd.*

second part of the sec. it is sufficient to prove that the person in whose possession the stamp is found knew that the mark put upon it for the purpose of denoting that it has been used had been erased or removed from it. *It is not necessary to prove that his possession was fraudulent or with intent to cause loss to Government or that the erasure of marks* or impressions was done by the accused or that he had any connection with it But it must be proved that the stamp had affixed to some document and had been used for revenue purposes. "Used" means used upon document requiring to be legally stamped 39 C. W. N. 542.

S. 266. Being in possession of false weight or measure.

——to sustain a conviction under this sec. not merely the possession of the false weight must be proved but also the knowledge of the accused that it was a false weight. 38 Cr. L. J 323 · 1937 Mad. 209

S 268 Public nuisance.

——*the offence of public nuisance as defined in sec. 268 consists in the doing of any act or illegal omission which causes any injury*, danger or annoyance, etc. and the offence is complete when act of the nature is committed or when there has been an illegal omission of the kind 1935 Mad 189 · 36 Cr. L. J 467 · 1935 Cr C. 227.

——making construction upon a road *which is used as of right by* the public would constitute a public nuisance 1935 O. W. N 899 157 I. C. 638.

——in view of the definition of the word "public" in s 12 I P. C., the Muslim community or the Muslims of the neighbourhood would be [illegible] the word "public" which is used *in the expression* "public [illegible]

[illegible] shops in front of them [illegible] ng their goods and the [illegible] *e public road, held that* [illegible] act which exhypothesi [illegible] who have merely rented [illegible] sidered to be doing any [illegible] · 37 Cr. L. J. 269

S. 279. Rash driving on a public way.

——it is not always necessarily rash and negligent to drive on the wrong side of the road Much would depend upon other *conditions* 34 Cr L. J 1154 · *1933 Oudh 391*.

——on a straight and open road a speed of 30 miles cannot necessarily and of itself be described as an excessive and rash speed 1933 Oudh 391 36 Cr L. J. 1154.

——sec. 279 is designed to punish persons who drive vehicles or ride on any public way, to the *danger not only of the persons on the*

S. 279. Rash driving on a public way—*contd.*

road, but also to the passengers in the vehicle itself. The words "any other person" are wide enough. 1935 O. W. N. 1026 : 36 Cr. L. J 1352

——criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care to guard against injury either to the public generally or to the individual in particular which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have [illegible]

Cal. 300 *Ref.*

[illegible]

——where rashness or negligence in driving a motor car constitutes the offence, the conviction under sec. 279 I. P. C. is not only proper but more appropriate 1932 All 69 33 Cr L J 309 1932 Cr C. 89

S 282 Conveying person by water for hire in unsafe or overloaded vessel

[illegible]

rightly convicted under sec. 282 [illegible] 35 C W N 200 35 Cr L J 1373 1934 Cal 490

S 283 Danger or obstruction in public way or line of navigation.

——s 283 does not refer to any public nuisance or to the intention of the accused It deals with an offence affecting the public health, safety, convenience decency and morals and it is enacted to protect [illegible] places [illegible] he [illegible]

S. 290. Punishment for public nuisance in cases not otherwise provided for

——passing urine in a grazing ground poramboke under cover of a tamarind tree in a village to which the Town Nuisance Act does not apply, is not an offence under sec. 290 1937 Mad. 130 · 38 Cr. L. J. 120.

——a public nuisance may be caused without any deliberate intention of causing it and neither s 283 nor s 290 refers to any intention on the part of the accused 1935 All 746 36 Cr. L. J. 893

S 292. Sale, etc , of obscene book, etc

——the test of obscenity is not whether the book has a harmful effect on men of wide culture and character, but how does it affect the young of either sex whose minds are impressionable The motives of the publisher are irrelevant in considering the obscenity of the book though they may be taken into account as regards the question of sentence. 36 C W. N 985 56 C. L J 123 33 Cr. L. J. 771 1932 Cr. C. 608 . 1932 Cal. 651.

S 294-A Keeping lottery office

[illegible] the actual drawing [illegible]

of dividing that fund between them by chance and unequally is a lottery Therefore where a person subscribes to a fund every month and the arrangement is that the prize-winner every month as a result of draw will be paid a lump sum after which he would not be required to subscribe, held that there was no lottery. 1934 Mad. 482 57 M. 844

——where in a scheme every person who purchased a ticket at the entrance of a show was by so doing contributing to the common fund from which the prizes were to be taken and every such purchaser of an entrance ticket had an equal chance to draw back four hundred times as much as he put in held that the scheme comes within the meaning of the word ' lottery". 1934 Sind 149 1934 Cr C 1141.

[illegible] with a lottery, [illegible] plied to all [illegible] . W. N. 731 [illegible] who were to [illegible] week prizes [illegible] one and go [illegible] should go [illegible] ners were to [illegible] g defaulted [illegible] transaction [illegible] act Act, 1934 [illegible] le Judge was [illegible] J 1232 by a

S. 294-A. Keeping lottery office—*contd.*

[illegible]

s 294-A 1934 Sind 69 35 Cr L J. 1249

——where the scheme published was a lottery but there was however no physical or mechanical "drawing" to determine the lucky lots which depended on an original number to be determined on a sort of arithmetical progression based on an original number to be determined merely by the chance of a bond holder, the publication of the scheme involving such a lottery was no offence 1934 Lah 840 · 1934 Cr. C. 1182.

——where the ultimate object of the scheme was a lottery and a substantial part of the business was illegal the company should be wound up The fact that such lotteries were intended to benefit charities does not matter 63 M L. J 554 I R 1932 Mad 759 33 [illegible]
2 Rang 143
, Cr L J 696
Govt of India.
in connection
with the Irish sweep stake commits an offence under s. 294-A 56 C. L. J 539 1933 Cal. 332 34 Cr L. J. 518.

——(Per *Varadachariar J*) A scheme may fairly be regarded as a lottery if it is clear, whatever other benefit the subscriber or compe- [illegible]

ordinarily when the draw takes place Consequently not only is it correct to say that there is no keeping of an offence within the meaning of sec 294 A, if the number of subscribers is known but it is almost inevitable that the number of subscribers should be known when the drawing takes place and the offence under the first part of s 294-A is committed 59 M 562 1936 Mad 225 F B

——the Government issued an order declaring that conducti chit funds was illegal but added that prosecutions of persons who running chit funds in ignorance of the law would be withheld p

S 294 A. Keeping lottery office—*contd.*

that they did their best to wind up the lottery and to pay everybody who had subscribed to the lottery The District Magistrate publ shed ... he subscriptions On ... s prosecuted under s ... accused was proved ... he was liable to be ... of the Crown m ght subsequently have been ... The wit holding of prosecution during certa n time in which the subscriptions were directed to be repaid was not tantamount to authorization of the lottery during that time 1938 Mad 715

S 296. Disturbing religious assembly.

... brought a ... between ... sed were ... mm tted

1933 Oudh 196 34 Cr L J 778 34 A 78 *Dist*

S 297 Trespassing on burial places etc

——the word ' trespass as used in this sec has not the same *meaning as the expression ' criminal trespass used in sec 441 It* ...

33 Cr L J 517

S 299 Culpable homicide

—— ... mely s 299 and s 300 shows ... occur ... likely t ...

1936 A L J 73

——where a person wilfully and without justifiable excuse inflicts a wound which is ultimately the cause of death of another person he shall be deemed to have caused the death of that other person Though *in fact an injury may be sufficient in the ordinary course of nature to* cause death, it is not murder unless it was intended that the injury should be sufficient in the ordinary course of nature to cause death Where there was such an intention it is murder 1937 Rang 396 38 Cr L J 1097 F B

——sec 299 clearly defines the offence of culpable homicide Culpable homicide may not amount to murder (a) where though the evidence is sufficient to constitute murder one or more of the exceptions to sec 300 apply or (b) where the degree of *mens rea* specified under

S. 299. Culpable homicide—*contd.*

s 299 is present but not the special degrees referred to by s. 300 1934 Sind 145 . 1934 Cr. C. 1137

——a person may be guilty of murder notwithstanding that death would have been avoided if the injured person had submitted to proper treatment. A person may be guilty of murder when the immediate cause of his death is the treatment administered, and the question whether the treatment was proper treatment does not arise, provided it was administered *bona fide* by a competent physician or surgeon. Where a person stabs another in chest with sufficient force to penetrate *the chest cavity, it must be held that he intended to cause injury*

[illegible]

1936 *Cr. C 1068*

——where death was due to the ignorance of the deceased and the unskilful treatment which he received and the injuries were only the remote causes of death, held that accused was not responsible for causing death and as such was not guilty of culpable homicide 1935 Rang. 418 1935 Cr C. 1205, 1935 Oudh 446 35 Cr. L. J. 1262

S. 300. Murder

——in law if a person inflicts such a grievous hurt to another that death ensues, and the person responsible for the act knows that it is likely to so ensue or should know it, then he is guilty of murder under s 300 cls (3) and (4) 1935 Cal. 526 39 C. W. N. 199 36 Cr L. J 1220

——where during the course of a dacoity at night a gunner among the dacoits shot at the victim with a shot gun aided by the flash of a torch cast by his l ghtman, and the death was due to acute peritonities caused by the perforation of the gun by a shot entering his body and it was found that the intention of the gunner in shooting was only to cause some injury as would disable the victim from goi g away and offering resistance and that the light was flashed only to shot out the victim and it was also found that sl ots were directed towords a comparatively lower part of the body and that killing was not the intention of the party and the injury too was not such as would in the ordinary course be sufficient to cause death and the medical e· was that death was due to exhaustion as the result of injuries held the act did not amount to "murder" within sec 300 39 C. 488 : 36 Cr L J 1322 1935 Cal 580 Sp B.

S. 300 Murder—*contd*

——when for the [illegible]

——if weapons like lathis or the blunt side of axes are used in order to break every limb of a man's body and a man dies thereof, it is just as surely murder as if the head had been smashed. 1936 Lah. 233 : 37 Cr. L. J 751 1936 Cr C. 199

——if a man, who is armed with a deadly weapon like a sela, thrusts that weapon into the chest of his victim and causes instantaneous death, he can have only one intention, namely intention to murder 1934 Lah. 741 1934 Cr. C. 1093.

——when the disease which actually causes death is meningitis, peritonitis tetanus, pneumonia, etc., and it is a natural and probable result of the injury, the person who inflicts the injury must be held responsible for the disease arising from the injury. 1937 Rang. 429

Cr L J. 868. The fourth clause of s. 300 comes into play only if no other clause applies 1937 Lah 593 38 Cr L J. 1073

——when the case is on the border line between an intention to cause injury likely to cause death and an intention to cause injury [illegible]

——neither principle nor approved practice can be invoked in favour of the view that a capital sentence should not be inflicted when the offenders are constructively guilty of murder. 13 Pat. L. T. 702 : 11 Pat 807

——where the accused is proved to have given only one blow with a dah, on a nonvital part of the body, namely on the knee of the deceased, the intention of killing should not be attributed to the accused

S. 300. Murder—*contd.*

[illegible] but under s. 304 first part.

[illegible] but it is not so dangerous [illegible] in the ordinary course [illegible] e of a lathi. 37 Cr L. J 1020 1936 A. L J 333

——injuries on head fracturing skull are sufficient in the ordinary course of nature to cause death and the person or persons who inflicted [illegible] causing injuries so [illegible] : 36 Rang. 477 1936 [illegible]

[illegible] not less than five inches the blow must have been delivered with great force and the injury is necessarily fatal and the presumption arises that the person who inflicted it intended to cause death and he is guilty of murder. 1936 Rang 474 1936 Cr. C. 964

——circumstantial evidence of murder, conviction was not interfered with by the Board. 41 C. W. N. 805 38 Cr. L. J 573 1937 P. C. 179 18 Lah 371. **P. C.**

——the fact that a criminal does not explain very suspicious circumstances against him is certainly circumstantial evidence which may be taken into consideration against him 17 Lah 547, 1936 Lah 580 1936 Cr C. 651.

——where the evidence for prosecution points affirmatively no further than manslaughter, the law would not enlarge the proof and transform the case into one presumptively of murder 1936 P C. 242 37 Cr L J 914 40 C. W N 1164 38 Bom L R. 1101, **P C**

——where there is no evidence to show that the accused caused [illegible]

accused if that evidence establishes the guilt of the accused beyond reasonable doubt 1937 Rang 8 38 Cr L J 299

——finding a number of small spots of human blood on a dhoti [illegible]

17 La . 541

——the suddenness of the attack by the accused on the de[illegible] is not necessarily an extenuating circumstance 1936 Sind 31 Cr. L. J. 483

S 300 Murder—*contd.*

——where the injuries inflicted by the accused on the deceased were of very serious nature and several in number, one wound cutting the neck and severing the fourth cervical vertebra, another wound cutting the skull and exposing part of the surface of the brain etc, held that the accused had intended to kill the deceased and were guilty of murder 1938 Rang 331.

—— [illegible] of accused's recent posses- [illegible] draws from given facts without the help of legal [illegible] Rang. 439.

——where there are strong reasons for suspecting that the evidence has been tampered with and there are grave grounds for suspecting that the accused was the man who comitted the offence, but on the record as it stands it is impossible to say that his guilt has been proved beyond all reasonable doubt and there is the dying declaration of the deceased and the doubtful support given to it by an incredible witness, a conviction cannot be warranted. 1937 Rang. 431

——the weakness of falsity of an alibi is not a sufficient ground for holding that the case for prosecution, in a charge of murder is threreby improved. 1937 Rang. 10 : 38 Cr L. J 279

——the nature of the material object used and the force used [illegible] as to whether [illegible]

——where death results from the injuries caused by the accused, the burden of proving the circumstances which entitled him to kill the deceased so as to bring his case under any of the exceptions in the Penal Code is on him; but if it can establish that such circumstances appear from the prosecution evidence, he would be equally entitled to their benefit. 1933 Lah 1055.

Exception (1).

——the provocation that will bring a case within Excep. 1 to sec 300 must not be provocation given by anything done in obedience to the law or by a public servant in the exercise of his powers. An arrest or attempted arrest by a private person if not strictly justifiable by law is not outside the provocation mentioned in Excep. 1. 1933 Pat [illegible]

[illegible] sudden provocation [illegible] 1 369 : I. R. 1933 Lah [illegible] 33 Cr. L. J. 330.

S. 300. Murder (Exception 1)—*contd*

L. J. 637.

——in a case where a husband finds his wife actually committing adultery and kills her or her lover at once, that of course would be grave and sudden provocation, but where the injured husband has time for deliberation, the exception does not apply 1937 Lah. 692 38 Cr. L. J 1057

——where the accused found his wife and her paramour together in his house but not in the actual act of intercourse, and on being provoked killed his wife, held that under the circumstances, the case fell within Exception 1 1937 Sind 212 38 Cr L. J. 968

——the deceased was an orphan aged 30 brought up from his infancy by the accused. He got drunk and in the dead of night attempted to violate the wife of the accused. Hearing her cries the
of his wife
death, held
than by 1st

n committing
adultery with his (accused's) wife in a closed room, through a chink
and the accused waited
began dozing on th
killed him with a
provocation was bot
All 532, 28 C 571, *Rel on*

——where the accused who was provoked by finding his rival at his mistress's house caused his death by striking him on the head with lathi, the provocation cannot be described as grave and sudden so as to entitle him to the benefit of Exception 1 1937 Oudh 457 38 Cr L. J 938

——the accused was very devoted to his wife but his wife was
him to live in the
regnant the accused
to which she replied
bed her, held that
Though he mig
yet if the reply
accused was
1937 Rang
went out to
stranger for a clandestine purpose why she did not give up
ways and she refused to listen to him and gave an insolent

S. 300. Murder (Exception 1)—*contd.*

thereupon the accused gave a blow with a hatchet causing death held that the provocation was grave and sudden. 1933 Lah. 869 1933 Cr. C 1114

—[illegible]

[illegible]

-cide But this ruling does not apply to the murder by the husband of the paramour with whom his wife confessed to have committed adultery. In the present instance there was no scope for surprise by the confession or suddenness for the provocation as the husband had for long a suspicion almost amounting to certainty. 1933 M W. N. 543 1934 Mad 176 35 Cr. L J 694 1934 Cr. C. 328.

——no words are more grave than a public taunting by a man whom one has suspected before of being the paramour of one's wife and who now boasts of the fact and expresses his intention to take her to live with him 1936 Rang 472 1936 Cr C 962.

——the accused was in drunken condition and his passion being [illegible]

[illegible]

Excep 1. 1936 Rang 325 37 Cr. L J. 902

——where the deceased, a man of bad character behaved in an outrageous manner by striking the accused with his stick and thus gave grave and sudden provocation sufficient to make any person of ordinary temper lose his self control and in that moment the accused stabbed him, held that the accused was entitled to the benefit of Excep 1. 1936 Rang 49 37 Cr L. J 411.

——where the deceased having no particular right to interfere [illegible] and wife were doing, interferes while [illegible] by holding her hand without rough- [illegible] the accused or in all probability [illegible] ice amounts to grave and sudden provocation. 1936 Rang 216 . 37 Cr. L. J. 569

——where the fight arose without premeditation on the part of the accused who were themselves provoked by the party of the deceased and the blows were struck in the heat of a passion upon a sudden [illegible] due advantage or acting in a cruel [illegible] receive the benefit of Exception 1

[illegible] acted under grave and sudden provocation is whether the provocation given was in the circumstances of the case likely to cause a normal reasonable man to lose control of himself to the extent of inflicting the injury that he did inflict. 1934 Lah 600 1934 Cr. C 927.

S. 300. Murder (Exception 1)—*contd.*

——the burden of proving that the provocation was grave lies on the accused. 1936 Sind 31 : 37 Cr. L. J. 483, 1933 Oudh 148 : 34 Cr. L. J. 498, 1933 Lah. 1055.

——that the accused lost his self control owing to provocation is no deffence where the accused himself started the quarrel and the abuses by the other party were only made in response to the abuses by the accused. 34 Cr. L. J. 404.

——what amounts to grave and sudden provocation may vary according to circumstances of each case and according to general standard of self control amongst the people of the class involved. 1936 Rang. 40 : 37 Cr. L. J. 410.

Exception 2.

——where there is free fight between two persons, no right of private defence accrues to either of them. 1934 Lah. 332 : 35 Cr. L. J. 1319

——where the accused at the time he attacked the deceased was [illegible]

Sind 31 : 37 Cr. L. J 483.

Exception 4.

[illegible]

——where the accused and the deceased exchanged abuses and grappled with each other and during the struggle, the accused suddenly took out his knife and stabbed the deceased under his armpit, pierci the lung and causing death, and motive for murder was not establi and in the district to which the parties belonged knives were com carried, held that the accused having, suddenly and without the consequences, stabbed the deceased in the heat of passi

S 300. Murder (Exception 4)—*contd.*

offence fell under Excep. 4 1934 Lah. 818 : 35 Cr. L. J. 1165, 1937 Rang. 2 : 38 Cr L. J 321.

——where the deceased died as a result of blows received in the course of a sudden fight between two parties in which every one was trying to hit one of the opposite side and nobody thought about any private right of self-defence and it was not clear as to which party were aggressors, the offences came within Excep 4. 1935 All 438 : 36 Cr L. J. 1145.

——where there was an altercation and exchange of hot words and abuses between the accused and the deceased but the fatal blow with a large knife was shown to be premeditated, held that the fourth exception had no application 1933 Pat 508 1933 Cr. C. 1079

S. 302 Punishment for murder.

——it would be wholly wrong to hang boys who are only between 15 and 16 years of age, youth is by itself a sufficiently strong reason for setting aside a sentence of death and substituting a sentence of transportation for life. 18 Lah 658, 1937 Rang. 121 38 Cr. L. J. 1022.

——the fact that the age of the accused is only 20 will not be [illegible]

1165.

——evidence consisting of one unsatisfactory eye-witness corroborated by two equally unsatisfactory witnesses, is not enough on which to base a conviction for murder 1935 Lah. 433 36 Cr L. J. 1195

——in a murder case it is important that the more important of the witnesses should be examined in such a way as would enable the Court to properly appreciate their evidence The evidence should be led in sufficient detail and with due regard to the sequence of events, the facts which the witnesses saw or the acts which they did and also the reasons which actuated them to do the acts being narrated in an intelligent fashion. 62 C 572 : 39 C. W. N 368 1935 Cal. 184 36 Cr. L. J. 808 Sp. B

——where a case is between two rival factions in a village and all the witnesses against the accused belong to the family of the deceased, *some corroboration must be looked for as a matter of* prudence, specially where the hanging of the accused would result in valuable property coming back to the party of the complainants, and if there is no such corroboration the accused will be entitled to benefit of doubt. 1935 Lah. 130 : 1935 Cr C. 189

S 302 Punishment for murder—*contd*

——a stab wound which penetrates the wall of the abdominal cavity ought to be held to be one which is sufficient to cause death in the ordinary course of nature 1935 Rang 408 1935 Cr C 1172

——where accused has given a severe blow on the head of the deceased with a deadly weapon causing extensive fracture of the skull, he is guilty of murder and the fact that deceased died only a month after is immaterial 1935 Lah 94 36 Cr L J 1335

——where the crime was unpremeditated and the accused acted under the impulse of the moment the extreme penalty should not be passed 1935 Lah 94 36 Cr L J 1335 1935 Rang 427 1935 Cr C. 1201, 1935 All 362 1935 Cr C 362 1936 Rang 28 37 Cr L J 449 37 Cr L J 307 16 Lah 1098 [illegible]

[illegible]

mother or that he was sincerely penitent and filled with remorse after the murder cannot be taken as a sufficient ground for imposing the lesser sentence But if the accused was a young man of 22 or 23 and was overcome with passion at the insults heaped upon him by the deceased and committed the act under provocation, that is a fit case for awarding the lesser penalty of transportation for life 39 C W N 262 36 Cr L J 1254 1935 Cal 591

——where there is doubt in a murder case the Court should not and cannot pass a lesser sentence of transportation for life If the doubt amounts to a reasonable doubt the accused must be acquitted 36 Cr L J 1496 1935 Cr C 1136

——although it cannot be said of an accused convicted under s 302 that he was insane or did not know the nature of his actions, yet if it appears that he was in abnormal mood when he committed the offence, the extreme penalty should not be inflicted 1936 Rang 113 37 Cr. L J 435

——the fact that the accused had been voluntarily drunk at the time of murder is not in all cases a reason for not passing the death [illegible]

[illegible]

651.

——where the accused murdered her husband with brutality and herself brought the neighbours to scene of murder by her cries and failed to make even a pretence of grief by shedding tears and there was intelligent motive on her part and she made a full confession sta that she had committed the murder in pursuance of the bidd

S. 302 Punishment for murder—*contd.*

a spirit, held that under the circumstances a capital sentence should not be passed 1936 Pat 245 37 Cr L J 543 · 1936 Cr C 285, 10 B 512 *fol*

——a stab wound penetrating into the abdominal cavity and cutting the small intestine is necessarily fatal and in the absence of extenuating circumstance, sentence of death should be passed 1936 Rang 60 37 Cr. L J 418

——there can be no infe ... ho was found last with the decea ... I R 1932 Lah 291 1931 Cr.

——where it appears that either of the two accused mig t ave committed the murder the evidence did not disclose an offence of murder 1932 Mad 748 1932 Cr C 923 I R 1932 Mad 776 33 Cr L J 814 1932 M W N 461

——where the accused struck a more or less random blow in he heat of a fight which proved fatal, the accused ougl t to be committed under s 304 (2) and not under s 302 I P C 1931 M W N 1320

——when tl e accused out of despair on account of starvation killed her infant daughter by cutting her throat, the case did not call *for the infl ction of capital sentence and that the ends of justice would* be sufficiently met by sentencing tl e accused to transportation for l fe *137 I C 511 1932 Cal 658 I R 1932 Cal. 339 1932 Cr C 650* ... and the confession ... murder cannot be ... Cr C 961 I R

——where four persons attacked their victim in concert with a view to murder him and fatal stab was i flicted by one of them, all are guilty of murder 1932 Cr C 861 1932 Cal 815 : 33 Cr L J 663 F. B

——where the Judge finds that the murder was premid tated cold ... no extenuating circums- ... d 1932 Lah 245 : 33 ... h 463 138 I C 327, ... 165 34 Cr L J 395 ... 7 34 Cr L J 413

... extenuating circumstances not already recognised and the law does not grant immun ty from cap tal punishment to the members of a particular class or commu nity, such as Brahmins. 1932 Lah 500 33 Cr L J 497 : 1932 Cr. C 664

——weak intellect of the accused subject to fits may be a m tigating circumstance 1931 All 133 33 Cr L J 714 1932 Cr. C 231

——tender age is no doubt a m tigating circumstance to be taken into consideration but along with other circumstances of the case 1933

S 302 Punishment for murder—*contd.*

Cal 1 1933 Cr. C. 21 33 Cr. L J. 837 I. R. 1932 Cal 673 140 I. C. 80, F. B.

——the fact that the accused had no personal grudge against the deceased and was a hired murderer is no ground for not awarding the capital sentence in case of wanton and cold-blood murder. 34 P. L. R. 427 142 I C. 620 I. R 1933 Lah. 225.

... *churri* the offence 302 · I. R. 1932 Lah. 577

... ouse in which he, his ... drunken brawl the ... ltimately resulted in ... but one under s 326 was committed 1934 Lah 477 35 Cr L J 1407.

——where the medical evidence does not support that the deceased met with a violent death, no charge of murder can be brought. 1934 Oudh 286 35 Cr. L J 992

——where the medical evidence was that death was due to meningitis and compression of the brain and had no connection with the injuries caused, the offence fell under s 326 and not under s 302. 1934 Lah 368 35 Cr. L. J 1283.

——where murder is committed in a house with the object of stealing the valuables belonging to the deceased, the accused persons should be guilty of murder and not only of an offence under s 460 1934 All 1032 1934 Cr C. 1339

——in a case of murder the prosecution is not to prove an adequate motive in every case 1934 Lah 368 35 Cr. L. J. 1283, 1933 Lah 1005

... death of ... his child ... . L J 1128 ... ceased for 11 years, and the deceased changing her paramour accused remonstrated with her but she did not mind and the accused killed her, held that having regard to human nature there was cause of provocation and death sentence should not be passed 1933 All 533 1933 Cr. C. 868.

——the deceased and another who had already attacked a cousin of the accused came forward armed with ballam and barchhi but upon attacking the accused and his people, the accused gave the deceased a blow in his stomack as a result of which he fell down, held that the accused was justified in protecting himself and his people as he was under apprehension of further attack on himself and his people and consequent death and that he was not guilty under s. 302. *1933* 1053

——where an inhuman and horrible murder was perpetrate blood by a boy of 15 or 16, he should not be hanged. 1934

S. 302. Punishment for murder—*contd.*

35 Cr. L. J 448, 1933 Lah 229 34 Cr. L. J. 375, so also a boy of 17 who was engaged in a murder under the influence of people very much older than himself 1934 Lah 786, 1933 Rang 134 · 34 Cr L J. 835 But where the accused aged 18 or 19 made indecent overturn to the deceased and asked him to have unnatural intercourse which the latter refused whereupon the accused got a churri and gave several stabs causing serious injuries to the deceased, held that death sentence was proper 1934 Lah 20 : 35 Cr L J 619, so also where a murder is deliberately planned and carried out by a young man and there are no extenuating circumstances, sentence of death is proper. 1933 Lah 998 1933 Cr C 1513, 1933 Lah 956 1933 Cr. C. 1411, 1933 All 939 1933 Cr C 1559.

——in a case of murder by poison there are three main points to be proved ; first, did the deceased die of the poison in question, secondly, had the accused got the poison in question in his or her possession ; and thirdly, had the accused opportunity to administer the poison 1933 All 394 . 34 Cr L. J. 754.

——*in a charge of murder by arsenic poisoning it is essential* for the prosecution to prove (a) that the person alleged to have been murdered died of arsenic poisoning and (b) that the accused person administered arsenic to the deceased with intent to murder The evidence of the Civil Surgeon making the post mortem examination is not sufficient 1933 All 837 · 1933 Cr. C 1463

——drunkenness, though voluntary, can be taken into consideration as an extenuating circumstance justifying the imposition of the lesser penalty for murder. 1934 Rang 361 1934 Cr C. 1326, 1934 Rang. 10 35 Cr. L. J 1065

——where it is proved that the shot gun was fixed by the accused at such a close range that it would not have other than a fatal effect the accused must be convicted under s 302. 1933 Pat 147 1933 Cr. C. 402 : 34 Cr L J 1071

——where the object of a conspiracy is to commit a dacoity and not to commit a murder and a murder is committed by one of *the dacoits* in the commission of the dacoity, all the others can be convicted only under s 396 but not under ss 302 149 1933 Lah 077 : 1933 Cr C. 1467, when one may be constructively guilty of murder. 1933 Lah [illegible]

[illegible]

death of that person but in the belief that the act had caused death the accused did another act for hiding his crime which resulted in death, the accused should be convicted of murder and not any lesser offence

S 302. Punishment for murder—*contd.*

933 Mad 798 34 Cr. L. J. 1109 42 M 547 F B *Dist*, (5 W. R. Cr) 55 25 Cr. L. J. 703, 32 Cr L. J 483) *Rel on* (15 B 191, 15 W. N. 1279) *Ref.*

——in a case of deliberate fratricidal assassination for the basest of motives the Court should inflict the death penalty 1933 Pat. 1[?] 34 Cr L. J 395

——in very few cases of murder can it be said that the injury necessarily resulted in death, but if it is caused with the intention or knowledge and death results from the injury then the offence committed is murder or culpable homicide as the case may be 1938 Mad 723

——there is no rule of law that if there is no eye witness to the murder the accused cannot be sentenced to death. Circumstantial evidence may be, and often is, more cogent than the evidence of an eye-witness 1933 Pat 180 34 Cr L J. 395

——the strength of the evidence against the accused is a matter to be considered before but not after conviction Where the Sessions

... J 349 1933 Cr. L. 404 F B.

——when once the guilt of murder is proved, the proper penalty to be inflicted is a matter for the d[iscretion] ... no means tr[?] ... several of th[?] ... for withhold[?] ... the other [?] ... it has been ... and the othe[?] ... be inflicted ... 331.

——it is recognized that a person who has even wrongly, got the benefit of a lenient sentence at his trial, may sometimes be allowed to benefit by his good fortune, provided the sentence passed is one which is legal 1938 Rang 331, 1937 Rang 254 . 38 Cr L. J. 1051, *approved*

——the accused who was charged with the murder made a voluntary confession of murder and also produced which he said he had removed from the corpse The subsequently retracted was sufficiently corroborated by the jewels and certain other evidence The Sessions J certain discrepancies in the evidence acquitted the the evidence proved beyond the possibility of doubt guilty of murder. 1938 Mad. 806.

S 303 Punishment for murder by life convict

——sec 303 has no application to the case of persons, other than the actual murderer, who are liable to enhanced punishment for the act [illegible]

murder under s 302 1933 Lah 977 1933 Cr C 1407

S 304 Punishment for culpable homicide not amounting to murder

——where the accused had no intention to cause death or such bodily injury as was likely to cause death, but death was unfortunately the consequence, the case fell within the second part of sec 304 1933 Oudh 269 1933 Cr C 596

——where there was a quarrel between the father and the son and the latter got suddenly enraged and struck the former in the heat of passion and caused three or four injuries one of which proved fatal, held, that there was no ground for attributing to the assailant the intention contemplated by s 304 part 1 and the conviction should be altered from sec 302 into one under sec 304 part 2 1933 Lah 664 34 Cr L J 1173

[illegible] of the accused [illegible]

[illegible]

within the purview of second part of sec 304 1935 Lah 80 1935 Cr C 94

——death caused at the request of the victim is only culpable homicide not amounting to murder falling under sec 304 54 M 504: I. R 1931 Mad 483 1931 Cr C. 484: 1931 M W N 393 32 Cr L. J 659 1932 Mad 436

——where the accused was convicted under sec. 304 part I, for having exceeded the right of private defence, a sentence of transportation for life is too severe, specially when the accused is shown to have used a weapon which he had already in his hand 1932 Lah. 344 33 Cr. L. J 587.

——where paddy sheaves belonging to the accused were removed by certain persons who had absolutely no *bona fide* right to them and the accused attacked the cartmen in whose cart the sheaves were being

S 304 Punishment for culpable homicide not amounting to murder

carried and the cartmen jumped out and began to run and accused thereupon began to chase them as also the other persons and inflicted injuries which caused death, held that though the accused had right of private defence of property, that right ceased when the property was left in their possession when the cartmen jumped and tried to escape and that the accused were guilty under s 304 1933 Rang 340 1933 Cr C 1150

——the deceased and the accused were neighbours One day the accused s father began to dig a water channel close to the wall of the deceased s house The deceased begged him to dig it a little distance away so as to avert any danger of his wall collapsing This request led to an altercation and accused s father and the deceased grappled with each other While they were doing so, the accused came up with an iron rod with which the water course was being dug and seizing it with both hands struck a blow on the deceased s head The deceased fell down dead Held that the accused must be credited with the knowledge that the heavy iron rod was likely to cause death He could therefore be rightly convicted under Part 2 of s 304 1938 Lah 618

——a charge of common intention to commit culpable homicide not amounting to murder is absolutely unreal and in nearly every practical case must be ridiculous It is difficult to suppose that two or three persons who have the right of private defence would even in real life have a sort of discussion to reach the common intention of exceeding that right If a Judge directs a jury that they can on

to point out what if any, there is to support such a theory, where this is not done, the conviction cannot be supported 41 C W N 570

not amounting to murder. 1934 Lah 467 1934 Cr C 762

——accused striking only one *lathi* blow on the head of deceased on being struck with hockey stick by latter—intention of accused appearing merely to give ordinary beating to the offence does not fall under s 304 part 2 but only under s . Lah 714

S 304-A Causing death by negligence

——a person driving a motor car is under the duty to control the [illegible]

on a straight uncrowded road, wanted to pass another car in front of him After having passed over the car he turned to his left in order to bring his car to the correct side of the road but in doing so he lost control and the car collided and three of the occupants in his car were killed. He was sentenced to 4 months' rigorous imprisonment. On a reference for enhancement of sentence, held that although the accused was not a capable driver, yet the death of the occupants was not a probable result of his incapacity, hence there was no reason for enhancement Held further, that in a case of this nature the sentence to be imposed cannot be measured by the consequences of the act, unless those consequences were necessarily inherent in the act. 1937 Bom 80 38 Cr L J 658.

——the mere fact that a human life is lost does not justify the imposition of a deterrent sentence, if the loss of life could not have been anticipated by the accused The Court has to consider whether *the accused person's rash and negligent act which has occasioned* [illegible]

not punish with severe sentences every motorist who has the misfortune to have an accident which results in a loss of life, even though the accident be due to his error of judgment. 1937 Bom 96 38 Cr L J 660

——the rash or negligent act referred to in s 304-A means the act which is the immediate cause of death and not any act or omission which can at best be said to be a remote cause of death Therefore, where there was no rashness or negligence in driving, the accused cannot be convicted under s 304-A on the ground that the brakes of the lorry were not in perfect order and that the lorry carried no horn 1936 Oudh 400 37 Cr. L. J. 975

——the term 'rash act'' connotes the want of proper care and caution, in other words, it means an over-hasty act. 1933 Rang 326 *1933 Cr C. 1284.*

——to impose criminal liability under s 304-A it is necessary that the death should have been the direct result of a rash and negligent act of the accused and that must be the proximate and efficient cause without the intervention of another's negligence 1933 All 232 : 34 Cr L. J 1013 4 Bom I, R. 679, *fol* but distinguished in the following case.

S 304-A Causing death by negligence—*contd*

——velocity of a vehicle is not the only criterion of rash and negligent driving Driving a car recklessly until it comes so close to a pedestrian that it is impossible to save a collision cannot but be characterised as rash and negligent driving Mere negligence on the part of a pedestrian cannot excuse negligence on the part of driver of such a fast and dangerous vehicle as a motor bus As between the pedestrian and a driver of the motor vehicle the responsibility of the latter is greater A negligent driver cannot plead in his defence the negligence of a pedestrian 1935 Nag 200 36 Cr L. J 1368 1933 All 232, *Dist*

——a Sub Inspector of Police while pursuing a party of gambler fired four shots in the air A person was injured and died immediately The revolver was a powerful weapon having a range of 100 yards He fired the first shot from a distance of 49 cubits and the last shot 34 cubits from the crowd The four shots were fired in succession while running and the surface of the ground where he ran was not level, held that the Sub-Inspector had acted hastily and was guilty under s 304-A 1933 Rang 326 1933 Cr C. 1284.

S 306 Abetment of suicide

S. 307. Attempt to murder.

——in a case of dacoity the evidence fully proved that the accused did fire his pistol in the direction of the police party but did not hurt

gun at another and
un went off and the
was convicted both
hat there was nothing

be immaterial, the causing of hurt is merely an aggravating circumstance 1937 Lah 619 38 Cr. L. J 1052, 1935 Oudh 281 Cr. L. J 534

S 307 Attempt to murder—*contd*

——under s 307 it is the intention or knowledge and the circumstances under which the act is done that are important. Even if the accused had not the deliberate intentions if he must have had the knowledge that his act was likely to cause death s 307 applies 1937 M W N 556

——accused who was a soldier and practised in the use of fire arms fired at his grand mother in the course of a quarrel. The bullet hit a fleshy part of her body and she recovered from the simple injury. Held that it is very doubtful that the accused intended to murder her as he *would have chosen a more vulnerable and vital part if he had so*
[illegible] 4 and not s 307 1933

[illegible] ond the control of the [illegible] in the normal course of events he is guilty under s 307 56 B 434 1932 Bom 279 1932 Cr C 391 138 I C 503 33 Cr L J 613 I R 1932 Bom 388 14 A 38 *Approved*

——when a person being pursued by the police turns round and fires at the police he commits an offence under s 307. It is no matter that he did not in fact hit any body or that the bullets were not found 37 C W N 312 1933 Cal 354 1933 Cr C 490 34 Cr L J 611 60 C 643

[illegible] hile a police officer is attempting [illegible] is that he is attempting to shoot [illegible] 307 1933 All 627 1933 Cr C

[illegible]

——in case of a free fight if evidence be inconclusive, marks of injury would be the test for the Court to go upon 1931 All 712 1931 A L J 1002 1931 Cr C 1048 133 I C 795 : I R 1931 All 747 32 Cr L J 1073

S 309 Attempt to commit suicide

——the law confers on the Court a very wide discretion in the matter of punishment and it is not necessary to inflict a sentence of imprisonment on a person who on account of family discord destitution loss of a near relation or other cause of a like nature overcomes the instinct of self preservation and decides to take his life. In such a case the accused should be released on probation of good conduct or sentenced to a fine. The rule applies with greater force to the case of a woman 1934 Lah 514 1934 Cr C 805

S 312 Causing miscarriage

——intention alone or intention followed by preparation are not sufficient to constitute an attempt. But intention followed by preparation followed by an act done towards the commission of the offence are sufficient. Where the accused intended to administer something which

S. 312 Causing miscarriage—*contd*

was capable of causing miscarriage and the evidence showed that he adminstered a harmless substance held that he was not guilty of an attempt to commit an offence under s 312 37 C W N 1151 1933 Cal. 893

S 318 Concealment of birth by secret disposal of dead body

——where the birth took place in the Medical School and Hospital and was attended by nurses and others in the Hospital who were well aware that she had given birth to twins and it was known to two women whom the nurses endeavoured to persuade to adopt the children and further, it was known to the third accused and there was no evidence that the twins died held that there was no concealment of the birth and that the case did not come within sec 318 62 C 1127 39 C W N 990 36 Cr L J 1460 1935 Cal 489 62 C L J 260

——in order to convict a woman of attempting to conceal the birth of her child the dead body must be found and identified as that of the child of which she is alleged to have been delivered *Above case*

S 320 Grievous hurt

——the primary meaning of the word 'fracture' is 'breaking though it is not necessary in the case of fracture of the skull bone that it be divided into two separate parts because it may consist merely of a crack ; but if it is a crack it must be a crack which extends from the outer surface of the skull to the inner surface 1937 Rang 253 38 Cr L J 960

S 323 Punishment for voluntarily causing hurt

——where the injury was the result of a blow given by the accused with a bamboo stick the offence was held not to fall under s 324 but under s 323 1937 Rang 8 38 Cr L J 299

——when the object of an unlawful assembly is to cause hurt a member of that assembly can, in addition to being convicted under s 147, also be convicted and separately sentenced under s 323 if he is proved himself to have caused hurt 1933 Mad 338 34 Cr L J 273 56 M 481 1933 Cr C 441, (40 C 511, 17 B 260 F B, 15 C 725) *fol* 53 M L J 656, *Diss from*

——when the accused commits different offences in respect of injuries caused to different persons in the same transaction, separate convictions are proper. 1934 Oudh 244 35 Cr L J 935

S 324 Voluntarily causing hurt by dangerous weapons or means

——a person convicted both under ss. 324 and 148 can be sent only under one or the other of the two sections. 1934 Lah 614 Cr C 944

S 324 Voluntarily causing hurt by dangerous weapons or means—*contd*

[illegible]

596

S 325 Punishment for voluntarily causing grievous hurt

——where the only inferen [illegible] was that the accused did not [illegible] grievous hurt to the deceased ur [illegible] on the head by a dung which [illegible] away, s 325 applies 1934 Lah [illegible]

——where several persons tacitly agree to beat a person with lathis and grievous hurt is caused every one of the assailants is supposed to intend the probable consequences of his act and it is a legitimate inference from their conduct that they intended to cause grievous hurt and not merely simple hurt 1936 All 437 37 Cr L J 864

——if the accused receives only one blow in a fight at the hands of one of his assailants and it is not known whose hands inflicted the blow, each of the assailants would be presumed to have had the intention of causing grievous hurt 1936 Lah 28 37 Cr L J 428 (29 A 282, 1914 Lah 305) *fol*

——where the injuries were of a very minor nature and detected only after four or five days after involving a fracture of a metacarpal bone in the right hand, the sentence need not be severe 1933 Lah 311 1933 Cr C 545

——a conviction in the alternative under ss 325 and 304 part 2 is not proper If the evidence shows that an offence under s 304 Part 2 has been committed it is unnecessary to mention s 325 if the evidence does not show an offence under s 304 Part 2 this section should not be mentioned 1933 Lah 865 34 Cr L J 1210.

——where a Magistrate convicted the accused under s 325 but passed a sentence of fine only, held that the sentence should have been one of imprisonment, held however, that notwithstanding that the sentence was irregular, the H C need not interfere in revision, the revisional powers being intended for the redress of genuine grievances and not of mere formal defects 1933 Pat. 179 34 Cr L J 407 1933 Cr C 510

——a person is said 'voluntarily to cause grievous hurt" when not only is the hurt which is caused grievous hurt but also he intends to cause or knows himself likely to cause grievous hurt 1935 Oudh 469 36 Cr L J 1151.

S. 326. Voluntarily causing grievous hurt by dangerous weapons or means.

——a ladle comes under the category of "substance" and a person ... heated ladle is guilty ... J 346 ... oman was possessed ... a heated ladle right into her mouth and thereby caused grievous hurt to her, he is guilty of an offence under s 326 and is not protected by s 88 or 92 1935 All. 281. 36 Cr. L J 346 1935 Cr. C 268.

——where the deceased and his son were aggressors who made an attack on the accused and the accused, even though his life was not in danger, attacked the deceased with ferocity but had no knowledge that the wounds he inflicted were likely to cause death, the conviction must be under s 326 and not under s 304 part 2, 1933 Lah 733

——where there was a fight in which the accused, his brothers and ... brain and had no connection with the injuries caused, held that the offence fell under sec. 326 and not under sec. 302 1934 Lah 368 35 Cr. L J 1283.

——beating a person with a stick with the knowledge that such beating would cause grievous hurt would not amount to causing grievous hurt under sec 326 unless grievous hurt is actually caused 1937 Mad 32, 38 Cr. L. J 753.

——the act of nose cutting is one which imports deliberate design of a particularly brutal and cruel character, 1938 Bom. 430, 17 Bom. L R 68 16 Cr L J. 168 1915 Bom 120 It cannot be said that nose cutting cases should as a matter of course, be committed to Sessions. *Same case.*

——the accused cut off the nose of his wife. There was nothing amounting to serious provocation and no cause for the accused's suspicion regarding his wife's misconduct held, that the nine months, imprisonment was inadequate and should be enhanced and was enhanced to 2 years 1938 Bom. 430, (16 B 580, 1915 Bom. 120) *Rel. on.*

S 328 Causing hurt by means of poison etc. with intent to commit an offence

——where the accused, a youth of 20 years, administered poison to his brother acting at the ... ided and the poisoned person ... the possibility of the accused b... under s 328 instead of unde... 1931 Cr. C. 794 Sp B.

S 330 Voluntarily causing hurt to extort confession or to compel restoration of property.

——the law clearly draws a very great distinction between simple hurt caused in the ordinary way and simple hurt caused for the purpose of extorting a confession or making an accused person recover any property Conduct of causing hurt by responsible police officers [illegible] offence In [illegible]

effect 1936 Lah 471 1936 Cr C 506

S 332 Voluntarily causing hurt to deter public servant from his duty

——sec 332 does not apply where the procedure adopted by the public servant is not authorised by law and is invalid 1933 Lah 162 34 Cr L J 460

——when a public servant in discharge of his duty enters a house with the implied consent of the owner, an assault on him is an offence under sec 332 1935 All 160 36 Cr L J 356 1935 Cr C 212

[illegible]

S 333 Voluntarily causing grievous hurt to deter public servant from his duty

[illegible] of Police by [illegible] eports against [illegible] 36 Cr L J 904 1935 Cr C 593

S 336 Act endangering life or personal safety of others.

[illegible] threw [illegible] erely [illegible] their [illegible] gun [illegible] held [illegible] 273 38 Cr L J 897

——the throwing of bricks by the accused into the house of the complainant is an act which may endanger the personal safety and amounts to an offence under sec. 336, I. P. C 1932 All 322 : 33 Cr L J 889

S 337. Causing hurt by acts endangering life or personal safety of others

——the Magistrates should not presume that negligence must have been present merely because a car hit something else It is always possible that accidents may occur for some other reasons 1933 Rang 329 1933 Cr C 1146

S 338 Causing grievous hurt by act endangering life or personal safety of others

——cases of accident due to rash and negligent driving of motor cars should be adequately punished Where the accused did not drive at more than 25 miles an hour and was in a repentant mood a sentence of one month's rigorous imprisonment was reduced to imprisonment of five days already undergone t [illegible]
Oudh 18 1934 *Cr C* 80
rigorous imprisonment an [illegible]
and was reduced to a fi [illegible]
Cr C 1582

S 339 Wrongful restraint

——the word proceed in ss 339 and 340 is not confined to the case of a person who can walk on his own legs and can move by physical means within his pc [illegible]
outside agency, which in [illegible]
the agency of its natural [illegible]
therefore be the subject o [illegible]
C W N 396

——volu itary obstruction of a vehicle or cart cannot be held to [illegible]

1935 Cal 252

Ss 341, 342 Punishment for wrongful restraint and wrongful confinement

[illegible]

under a warrant in execution of decree—there was no offence s 342 39 C W. N 318 36 Cr L. J 1252 1935 Cal 551.

Ss 341, 342. Punishment for wrongful restraint and wrongful confinement—*contd.*

——where accused had locked the room belonging to complainant and was convicted under s 448, held that as the accused had not entered the room but locke[illegible] convicted under s 4[illegible] voluntarily obstruct[illegible] *Held further,* that [illegible] s. 341 also, he would not be prejudiced if the charge under s 448 was altered to one under s 341 1937 Rang 250 38 Cr. L. J 989

S 347. Wrongful confinement to extort property or constrain to do illegal act.

——the acc[illegible] forcibly on blank [illegible] to convert the [illegible] L. T 588 : 140 I. C 752 : 1932 Cr. C. 852.

S 348 Wrongful confinement to extort.

——the words "to satisfy a claim or demand" cannot be limited to a claim or demand to property and a claim for restitution of conjugal rights is within the meaning of the sec. 1936 Pesh. 19 . 37 Cr L. J. 344 11 M 257 *Dist.*

S 349 Force.

——"force" as defined in the section contemplates the presence of the person using the force and of the person to whom the force is used 1934 Lah 454 1934 Cr. C 702

S 350 Criminal force.

[illegible] under s 352. 1935 All 910 1935 Cr. C 1133

S 351 Assault

——the examination of an arrested person in hospital by a doctor not for the benefit of the prisoner's health but simply by way of a second search is not provided by the Code and such examination without the consent of the accused would amount to an assault 35 C. W. N. 1212 1931 Cr C 753 131 I. C. 1053 1931 Cal 601

S 352 Punishment for assault or criminal force otherwise than on grave provocation.

——if the acts of the public servant are not strictly justifiable, if [illegible] not [illegible] he [illegible] es [illegible] 34 [illegible] 19 M. 349 *not fol*, 1937 M W. N. 176.

S 353. Assault or criminal force to deter public servant from discharge of his duties.

——where the warrant of arrest the execution of which has been resisted is clearly an illegal one the accused cannot be convicted under ss. 225-B and 353. 1934 Mad 206 35 Cr L J 782, 1933 M. W. N. 725

——an execution warrant is bad if the date on or before which it is to be executed and the date on or before which it is to be returned is not specified in it and a person resisting its execution commits no offence. 1934 All. 1016

——obstruction to attachment in execution of decrees is fairly common and should be severely dealt with. 1933 Nag 392.

——where it was found that the accused had threatened to assault the authorities and no assault had actually been made, held that the accused were not guilty under s 353 1934 All 687 35 Cr. L. J 1250

——whether a particular act does or does not amount to an assault depends upon the circumstances of each case A particular act may not amount to an assault in one case but the same act taken along with other surrounding circumstances may amount to assault in another case When the accused interposed between the attaching officers and the cattle attached and when he was caught hold of and removed from the place by a constable, flew into a temper and went away threatening that he would return and teach them [illegible] lathis and followed by others anc [illegible] that he came sufficiently close [illegible] apprehension and it amounted [illegible] 714 Sp B

——before a M proceeds to convict an accused under s 353 he [illegible] the part [illegible] whether [illegible] servant.

S 354 Assault or criminal force to woman with intent to outrage her modesty.

——essentials of the offence under this sec —whether the modesty of a girl of the age of five and a half can sufficiently develop so as to be outraged 1933 Cal 142 1933 Cr C 203 34 Cr. L J. 308. 142 I C 297

——the accused got hold of a girl and attempted to have intercourse with her The girl resisted and her screams attracted others and on their arrival the accused ran away, held that he was guilty under s 376/511 and not merely of a "preparation" under s. 354 1933 Lah [illegible]

[illegible] ment 1934 Lah. 36

S. 361. Kidnapping from lawful guardianship.

——the word "unlawful" is not synonymous with "illegal" or "immoral". It means what is not justifiable by law. A father of an illegitimate child [illegible] within about 10 days [illegible] scandal and not for its [illegible] and unlawfully. He is [illegible] in a case in which the [illegible] kidnapped, it is for the [illegible] d for an "immoral" or [illegible] 396

—— [illegible] in contravention of Act [illegible] exception to sec. 361 *1933 Rang* 98 34 *Cr. L. J.* 696 F. B.

——the words "lawful guardian" in the sec are used in a wider sense 1934 Pat. 170 35 Cr. L. J 814, 1919 Pat 27, *Ref* [illegible] not repugnant to law [illegible] one guardian. The [illegible] case while the minor [illegible] ho has been lawfully entrusted with the care and custody of such minor by the father or mother. Although the *karta* of a joint Hindu family need not necessarily be the lawful guardian of minor member within s. 361, very slight evidence of the consent of the natural guardian would be required to hold that the *karta* of the family is in fact the guardian of the minor who is being brought up under his care 1937 Pat 263 38 Cr. L. J 673

——the lawful entrustment contemplated by the Explanation to sec. 361 may be proved not *only by oral evidence* but *also by surrounding* circumstances and the conduct of the parties concerned. The section cannot be construed as contemplating a formal declaration of trust 1937 Pat. 263 38 Cr L. J. 673

——a girl who had been turned out by her husband and was free [illegible] said to be in the "constructive [illegible] accused, who takes her to his [illegible] n lawful guardianship. When [illegible] but is taken or enticed away [illegible] r resort, the position is entirely [illegible] 401.

——the Explanation cannot be used to mean that as against a person who in fact is the civil guardian of the minor, mere *de facto* guardianship can be set up so as to convict the real civil guardian 35 C. W N 195 58 C. 897, 32 Cr L J 888 · 1931 Cal 446

S 362. Abduction.

——in order to prove abduction by deceitful means, it is not enough for the prosecution merely to established that there was a misrepresentation of some kind but they have also to prove that there was a misrepresentation by which the person abducted was himself deceived

S 362 Abduction—*contd*

If the prosecution wants to make out an abduction in order to murder, it will have to prove that the murder was the result of a plan conceived beforehand. 41 C. W N 287

S 363 Punishment for kidnapping.

——s 361 must be read with s 363 and the offence of kidnapping from lawful guardianship penalised by the latter section is the offence which is defined in s 361, *i e*, the person against whom the offence is committed must be under the age of 14 if a male and under the age of 16 if a female 1933 Bom 417 34 Cr L J 1239 1933 Cr C 1289 F B

——where it was only shown that the accused had been maintaining a minor child left with him by his brother for over 2 months and there was no evidence to show that he had anything to do with kidnapping the child, the accused was not guilty either under s 363 or 368 1933 Lah 392 34 Cr L J 1117

S 364 Kidnapping or abducting in order to murder

——all the accused before the Court were proved to have taken part in the abduction of the deceased but it was doubtful who if any, [illegible]

1933 Lah 1035

S 365 Kidnapping or abducting with intent secretly and wrongfully to confine person

——where a girl was forcibly removed from her father's house by the accused persons at the instance of her husband and was taken to the house of her husband s brother-in law so that her father could not find her, the Court can conclude that she was to be secretly confined in that house and the conviction under s 365 is justifiable 1936 All 360 37 Cr L J 827

S 366 Kidnapping or abducting woman to compel her marriage

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S 366. Kidnapping or abducting woman to compel her marriage—*contd.*

conviction on the mere ground that the woman had already had sexual intercourse with persons other than her husband. *Above case.*

——the expression "seduced to illicit intercourse" is not intended to be restricted to inducing ... for the first time. It is used to indicate a ... popular, usual or ordinary se ... "induced to surrender or ...

surrendered her condition of purity from unlawful sexual intercourse She may have surrendered it in the past, and thereafter have resumed a life of purity. On the other hand if she is already leading a life of indulgence in unlawful sexual intercourse at the time of kidnapping, it cannot be said that she was kidnapped 1933 Cal 718 1933 Cr C 1268 60 C. 1457 35 Cr. L. J 307, 38 C. W. N. 71, 1935 Nag 34.

——in order to apply this sec. the act of alleged seduction must be subsequent to the kidnapping. Meaning of "seduced to illicit intercourse" 1932 All. 409 I. R. 1932 All 488 138 I. C 609 1932 Cr C. 513.

——the expression "seduced to illicit intercourse" cannot be deemed to include a case where a man takes back a woman with whom he had been living until ... which he had been ... 170 · 35 Cr. L. J 81 ... accused and then ... sec 366 does not ... Cr. C. 458.

—— ... This sec would apply ... kidnapped girl even ... a person can be ... the intercourse for which the kidnapping or abduction takes place that constitute the aggravation of the offence and not the priority in point of time of such intercourse. 59 B. 652 1935 Bom 189 : 36 Cr L. J 1509

——in a prosecution for an offence under sec 366 it is for the prosecution to prove that the girl was under 16 years of age. 1931 Lah 401 · 133 I. C. 560 32 Cr L J. 1041 · 1931 Cr. C. 641 I. R 1931 Lah 800.

——in trying a case under sec 366 it is the duty of Judges with

S 366. Kidnapping or abducting woman to compel her marriage—*contd.*

never really understand what their duty is under s. 366. 1936 Cal. 675 1936 Cr C. 931

——the word "will" referred to in the first part of sec. 366 I. P. C. means the will of the girl and not the will of her guardian 1932 Cal 442 36 C. W. N. 49 · 33 Cr L J 512

——every act done "against the will" of a person is done "without his consent" but an act done ' without the consent" of a person is not necessarily ' against the will" which imports that the act is done inspite

[illegible]

——the intention of the accused is the basis and gravamen of an offence under s 366. If the accused kidnapped or abducted the woman with the necessary intent, the offence is complete whether or not the [illegible] the event the [illegible] course taking [illegible] ommitted, the [illegible] *nihil ad rem* [illegible] which accused kidnapped or abducted her *Above case.*

——mere abduction without criminal intent of one of the kinds specified in the Penal Code is not an offence 1934 Lah 227 35 Cr. L J 1386, 1924 Lah 218

——under s 366 the object of the abduction must be an enforcement or compulsion or seduction to illicit intercourse The section is inapplicable to a case where the intention of the accused is to bring such influence to bear on the woman or her family that a certain case which is pending against him would be withdrawn or seriously prejudiced 1935 All 665 36 Cr L J 826

[illegible] nship of her [illegible] and legal [illegible] If no marri [illegible] 36 Cr L. J 1031

[illegible]

accused weeping may be relied on as corroboration 35 C. W. N. 105.

——under the Hindu Law the eldest brother of a girl is the per who has the right to arrange for her marriage if the father is not

S 366 Kidnapping or abducting woman to compel her marriage—*contd*

He cannot therefore be convicted under s 366, for getting his sister married without the mother's consent 1935 All 920 36 Cr L J

[illegible]

s. 366 1924 Oudh 69 35 [illegible]
Rel on 1 W R 348 *Dist*

——when the law presumes the affirmative then the negative is to be proved Thus where it is admitted by the complainant that there had been sexual *intercourse between a man* and a woman, the *mere* cohabitation affords an inference of greater or less strength that a marriage has been solemnized between them Hence under sec 366 it is for the prosecution to prove the negative of this presumption *viz*, that the man and woman were not *married* 1934 Sind 119 1934 Cr. C 960

——if a complaint by a husband, described in its heading as one under ss 366 and 368, *fulfils* all the requirements of a complaint under *s. 497* and clearly makes an accusation of *an offence* under that section, then if the adultery complained of is proved a conviction under that section will not be illegal on the ground that there has been no complaint as required by sec 199 *Cr P C* 1934 Lah 945 1934 Cr. C 1333

S 366-A Procuration of minor girl

——the mere circumstance that the accused accompanied a person who was alleged to have raped the girl or he was trying to sell the girl, possibly for immoral purposes may be suspicious but *is not sufficient* to establish the essential ingredients of the offence under s 366 A 1938 Lah 684

——the onus of proof that the girl was under 18 years of age at *the time of her alleged abduction, is on the prosecution unless that* is established satisfactorily a conviction under s 366 A cannot be sustained 1937 All 353 38 Cr L J 621

——an offence under s 366 A is a continuing offence 1936 Lah 800 1936 Cr C 873

[illegible] between the years of [illegible] place with the intention [illegible] does not commit *any* [illegible] an offence in the case or such g[illegible] go from any place with intent that she may be or knowing that it is likely that she will be *forced or seduced to illicit intercourse with another person* 37 C W N 317 34 Cr L J 341 1933 Cal 362 1933 Cr C 498

——to induce means 'to lead into It connotes a leading of the woman in some direction in which she would not otherwise have gone

S 366-A. Procuration of minor girl—*contd*

There must be the change of mind caused by an external pressure of some kind 1934 Sind 164 1934 Cr. C 1266.

——the offence under this sec. is complete when the accused have induced the minor to leave
does not constitute a fresh
I. R. 1932 Lah 512 33 Cr
——the absence of evid
was married does not affect *Above case*

——where the Sessions Judge accepted the majority verdict of
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1211.

——the appellants were prosecuted by the police as a result of a report which was made under s 366-A and they were charged under that section They were however convicted under s 498 although no complaint was made by the husband of woman in respect of which the offence is said to have been committed as required by s 199 Cr P. C, held that the conviction was bad even though the husband had come forward to give evidence 1933 All 626 34 Cr. L J 1227, *1933 Cr C 1005, (5 A 233 27 M 61, 29 C 415) Rel on 20 C.* 483 *not fol*

S 368 Wrongfully concealing or keeping in confinement kidnapped or abducted person.

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charge under that section fails 1937 All 182 38 Cr L J 401

——to sustain a conviction under s 368 it is not enough to show that the accused was concealing or confining in his house the girl who was kidnapped or abducted It must further be proved that he knew that she had been kidnapped or abducted 36 Cr L J, 1089

S 372 Selling minor for purposes of prostitution

——*sec 372 penalises the selling of a woman under the age of* 18 years with intent that such person shall be employed or used for the purpose of prostitution or illicit intercourse To sell a woman as a mistress comes within the sec as that is an immoral purpose 19 All. 324 35 Cr L. J 571

——to convict under s 372 there should obviously be proof act of hiring between the accused and the persons to whom the

S. 372. Selling minor for purposes of prostitution—*contd.*

is alleged to have hired out the minor for sexual intercourse, assuming that s 372 can have any application to an arrangement between the manager of a brothel and individual visitors there with regard to isolated acts of sexual intercourse. When there is no evidence of such act of hiring, and the only thing proved is that some of the visitors paid over some money to the accused, the manager of the brothel, the conviction cannot be sustained 40 C. W. N 1188

[illegible]

C W. N 1188

S 373. Buying minor for purposes of prostitution.

——the words "otherwise obtains possession" in s 373, must be construed *ejusdem generis* with "buying" and "hiring". Further the word "possession" implies some sort of control Where, therefore, a girl under 18 years of age ran away with the accused of her own accord and the intention of the accused was not other than to have intercourse with the girl and there was nothing to show that he had possession of her in any sense of the term or that he attempted to control her movements in any way, the accused cannot be convicted under s 373 41 C W. N 447 1937 Cal 250 38 Cr. L J 696, 58 B. 498 *Diss from*

——possession in s 373 indicates possession within a power of disposal It is something more than such possession as is obtained for the purpose of a single act of sexual intercourse Where, however, the girl had been in the complete control of the accused for a week, the [illegible] of the [illegible] the meaning of the sec 58 B.

[illegible]

35 C. W. N. 316.

S 376 Punishment for rape.

——vulval penetration with or without violence is as much rape as Vaginal penetration It is not necessary that hymen should be ruptured in every case. 1934 Lah 797 1934 Cr C. 1125

——in cases arising out of sexual matters when charges are made against a man by a woman, it is dangerous to convict upon her evidence. The jury should require corroboration of her story. The kind of

S 376 Punishment for rape—*contd*

corroboration required must be independent evidence The statement of a witness that he saw the girl coming out of the house of the accused weeping may be relied on as corroboration 38 C W N 108, 38 C. W. N 52 1933 Cal 833, 1933 Oudh 163 34 Cr L J 496

——if the jury believe the girl and think the accused guilty, then they have the right to convict him on her uncorroborated evidence In [illegible]

reluctant to accept her evidence 38 C W N 52 1933 Cal 833 1933 Cr C 1493.

——what exactly amounts to corroboration of the main evidence of the prosecution in a case of rape is always a difficult question It need not be the direct oral evidence of another person It may be only independent evidence of such a character that it connects the accused directly or indirectly with the crime that he was said to have committed A previous statement made by the prosecution and admitted under s 157 Evi Act cannot possibly be corroboration of her evidence in the case 41 C W N 641 1937 Cal 321

[illegible] as far as possible be [illegible] P C, so that if [illegible] ame may be given [illegible] 37 Cr L J 474

——the accused got hold of a girl and atttempted to have intercourse with her The girl resisted and her screams attracted other people and on their arrival the accused ran away held that the accused was guilty of an offence under s 376/511 and not merely of a preperation ' under s 354 1933 Lah 1002 1933 Cr C 1515

——in the case of an offence under s 376 where there is no suggestion that the sexual intercourse was with the consent of the girl, the question whether she is over or under 14 years of age is not of vital importance 1935 All 590 36 Cr L J 1095 1935 Cr C 595

——A boy of ten who has attained sufficient maturity of understanding to Judge the nature and consequences of his conduct can be convicted of an attempt to commit rape 1935 Rang 393 1935 Cr C 1116 37 A 187 *Rel on*

——a conviction for adultery cannot be substituted for a conviction [illegible]

[illegible] her consent constitutes [illegible] L J 776 1932 Cr C

S 377 Unnatural offences

——the offence under s 377 requires that penetration [illegible] little should be proved strictly A mere preparation should necessarily be construed as an attempt Where there was an

S. 377. Unnatural offences—*contd.*

to satisfy the lust by a carnal intercourse against the order of nature

——where the accused was proved to pave had carnal intercourse by placing his penis inside the nostril of a bullock, held that he was guilty of the offence 1934 Lah 261 35 Cr. L. J. 1096 . 1934 Cr. C. 489

boy, who is accomplice, idence of the aterial parti orroboration except in very exceptional cases. The fact of other boys visiting the accused in his room does not amount to corroboration. 39 C. W. N 1051 61 C. L. J 583

——sodomy is one of those offences for which there can be hardly any extenuating circumstances and even if so it cannot justify an over lenient sentence of 4 months rigorous imprisonment. Ordinarily such cases are committed to the Sessions Court. The *H* C. enhanced the sentence to two years. 1931 Sind 87 34 Cr L. J 618.

——where a person commits an unnatural offence after using violence and under most revolting circumstances, a sentence of whipping in addition to penal servitude is imminently right and proper 1936-Lah 256 37 Cr. L. J. 474

S 378 Theft

——the accused had no *bona fide* claim of right, but there was no

——where certain persons, purchasing a share in the land and of a decree , utilize some ch have been guilty under ongful loss to nder s 447 as- they have exercised their right of co ownership 1936 Cal. 261 · 37 Cr L J 747.

S. 479. Punishment for theft.

——where the complainant obtained a Singer Sewing Machine under a hire-purchase agreement which provided that on default of payment of an instalment the company would be entitled to retake possession of the machine or its accessaries and the employees of the company, overlooking the payment of the instalment, seized some of its parts under a *bona fide* mistake of fact, held there was no dishonest intention on their part. 58 C. L. J. 434 · 35 Cr. L. J 761.

——nobody has the right to steal the property of another in order to bring pressure to restore other property Where the accused stole the bullock of another who had stolen an ass in order to bring pressure to restore the ass, held that it was more than a purely tachnical offence and a sentence for three months was suitable. 1935 Lah. 769 1935 Cr. C. 1059.

——a man may be guilty of theft even if he be asserting a right to property which he belives to be a valid right If the accused on his own showing, was only entitled to 12 annas share but he removed the entire produce, he is guilty of theft of the 4 annas share 1933 Sind 90 34 Cr L. J 366

——unlawful act done in the exercise of *bona fide* claim may constitute theft. 1933 Lah. 481 34 Cr L. J 843

——whether a claim is *bona fide* or not must be determined upon all circumstances of the case and a Court ought not to convict unless it holds that the claim is a mere colourable pretence. 1935 Sind 115 36 Cr. L J 1310.

——thefts are not alway committed secretly, hence *bona fide* claim cannot be inferred from the fact that the accused acted openly while cutting the timber not owned by them. 1934 Pat 491 1934 Cr C 1075.

——where a person is found in possession of stolen property shortly after it was stolen the Court may presume, under s. 114, Ill (a) Evi Act. that he is a thief, the presumption however is not to be made invariably 1934 All. 455 · 35 Cr. L J. 1092

——persons authorised to prosecute for theft of ellectric energy—ss 39 and 50 of the Electricity Act 35 P L R 758

——when a tenant cut a tree included in his holding and was prosecuted by the landlord for theft held that the offence of theft being an offence against possession and the tenant accused being unquestionably in possession of the tree he could not be legally convicted for an offence under s 379 1935 Pat 472 1935 Cr C. 1174, 1931 Mad 241 1931 Cr C. 361.

——alternative charges under ss 379 and 411 against a deaf and dumb person who was found trying to force open the lock of a su belonging to a passenger—want of evidence. 1935 Pat. 451 Cr C 1168

——delivery of symbolical possession is effective judgment-debtor and of no effect as against a third

S 379 Punishment for theft—*contd.*

possession is therefore, not disturbed by delivery of possession to auction purchaser When the purchaser who has got symbolical possession, therefore removes crops grown on the land by third person, he is guilty of theft under s 379 The symbolical possession is no answer to the charge, nor can the act be said to have been under a *bona fide* claim of right 39 C. W N 1306

——when the attachment of crops is illegal by reason of non-compliance with the formalities prescribed by Or 21, R. 44 C. P. C. the property does not pass from the possession of the Jt. Dr. to the possession of the Court and a person who removes the crops with the consent of the Jt. Dr cannot be convicted of theft. 1935 All 214 36Cr L J 342 57 A 660

——where certain buffaloes were attached under a decree by an amin and handed over to two persons on their furnishing security and the accused rescued the buffaloes and it was found that the buffaloes belonged to the accused and not to the Jt Dr, the accused was not guilty of theft 1933 Mad 840 1933 Cr. C. 1517, 48 A 368 *fol.*

——when an auction-purchaser at a rent execution sale takes delivery of possession the bamboo-clumps standing on the land passes to him and if the accused cuts and removes certain bamboo clump he will be guilty under s 379 1932 Pat 341 13 Pat L T 519

S 382 Theft with preparation for causing death etc in order to commit theft.

——where the accused entered a betel plantation armed with a dagger with the intention to commit theft, but while committing theft had a scuffle with the owner but did not inflict any injury held that the mere possession of the dagger did not justify a conviction under s 382 1937 Rang 542

S 383 Extortion

Pat 601 1933 Cr. C 1363

S 390 Robbery.

——in order that theft may amount to robbery, it must be shown that hurt was caused in order to commit the theft or in carrying away or attempting to carry away the property obtained by theft. The hurt contemplated must be conscious and voluntary act on the part of the thief for the purpose of overpowering resistance on the part of the victim 1933 Lah 407 1933 Cr. C. 648, 1931 Mad 481 60 M L J 690

S 392 Punishment for robbery.

——where the accused an ex-convict, has been charged with an offence under s. 392, read with s 75, the sentence of 7 years' rigorous imprisonment is by no means too severe. 1934 Oudh 122 35 Cr. L. J. 566.

S 395 Punishment for dacoity.

——dacoity is a most serious crime which it is difficult to detect in the sense of bringing home the offence to the culprits, and in ordinary circumstances, a sentence of 7 years' rigorous imprisonment is the least *sentence that should be passed* 1936 All. 311 37 Cr L J 595

——a dacoity in which no resistance is offered by the inmates and so no violence is required does not on that account cease to be a dacoity *and should not be treated as a theft.* 1933 All. 114 1933 Cr. C. 209 34 Cr L. J 448 55A 117

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——where, though the accused had strictly speaking, no right to detain the produc
belief that they
their satisfaction l
under sec. 395 l
P. L R 956

——the mere fact that the accused produced the property obtained by the commission of dacoity from under a tree in a certain field not *belonging to him is not legally sufficient to satisfy his conviction under* sec 395 when there is no other evidence 1936 O W N. 295 37 Cr L. J 454

——although a person might not have taken part in the actual dacoity but if he actually met the band of dacoits just prior to the commission of the dacoity and bought them food he is guilty of abetment 1934 Rang 30 35 Cr L J 863

S 396 Dacoity with murder

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savagery and the appellants were taking part in normal way, when one
who was watching outside, shot
killed her held that a
gainst all and the appel
Rang 61 34 Cr L. J

S 396. Dacoity with murder—*contd.*

——where murder is committed not in self-defence, not in retreat but wantonly in order to intimidate the home-owner and the neighbouring villagers in the course of a dacoity by using heavy fire arms extreme penalty of law should be inflicted 1935 Rang 504 1935 Cr. C. 1300.

——where the dacoits being pursued abandoned the booty and finding the flight very difficult turned round and one of them stabbed

857 F B.

——where the dacoity was committed in British India but murder

——where shooting is resorted to by any of the dacoits for removing opposition, all are guilty of murder by reasons of the provisions of ss 149 and 396 1934 Rang 30 35 Cr. L. J 863

——s 396 expressly provides that the extreme penalty can be imposed on all the participants in the dacoity and ordinarily it is a normal punishment for all the dacoits present at the dacoity in which a wanton murder is committed. Not being a leader is no reason for awarding lesser sentence Confession under hope of being made an approver is an extenuating circumstance 1936 Rang 75 37 Cr. L. J 414.

——a sentence of 14 years transportation in respect of a charge under s 396 is illegal and ought not to be imposed 35 Cr L J 1066 1934 Oudh 354

S 397 Robbery or dacoity, with attempt to cause death or grievous hurt.

——the word "uses' should not be confined merely to cutting, stabbing or shooting but also to carrying the weapon for the purpose of overawing the victims of the dacoity 1933 Lah 35 34 Cr L J 45 1933 Cr. C. 115, 92 I. C. 750, 14 I C 651, 130 I C. 640, 1933 M W. N 727, 1932 Oudh 103 33 Cr L J 926

——s 397 is intended to cover the case of a person who displays a deadly weapon to frighten his victims and their neighbours or who makes use of any deadly weapon for other similar purposes 1934 Lah 522 1934 Cr. C 808

——s 397 can only be applied to persons who actually use deadly weapons at the time of the commission of the dacoity or cause or attempt to cause death or grivous hurt at the time 1933 Nag 252, 1933 Cr. C 936

S. 397. Robbery or dacoity, with attempt to cause death or grievous hurt—*contd*

1931 Pat 49 1931 Cr C 145 32 Cr L J 476 130 I C 267 I R

of the prosecution witnesses but it was not alleged by any witness that at the time of committing the robbery he was armed with any deadly weapon or that he caused grievous hurt or death or attempted to cause grievous hurt or death s 397 was not applicable 1937 Lah 561

S 398 Attempt to commit robbery or dacoity when armed with deadly weapon

——this sec. is applicable only to a case of an attempt to commit robbery and has no application to a case in which the robbery has actually been committed But it would not be proper exercise of discretion to inflict a lesser punishment if the offender is found guilty of robbery 1932 Oudh 103 33 Cr L J 926

——under s 398 only the actual offenders armed with deadly weapons can be convicted of the offence of dacoity 1932 Lah 367 33 Cr L J 460

S 399 Making preparation to commit dacoity

Held that these facts cannot amount to proof of preparation for committing dacoity 1935 Rang 294 36 Cr L J 1384

36 Cr L J 1003

——a person who receives stolen property from a gang of character described in s 401 is not necessarily a member of the 1932 Lah. 486 1932 Cr C 624 33 Cr L J 584

S. 401: Punishment for belonging to gang of thieves.

In the absence of direct evidence, in a prosecution under s 401, the purpose of association may be established by proof of acts from which this may be reasonably inferred, so the prevalence of thefts in certain area and the rise and fall coinciding with action taken against members of the supposed gang are as much relevant circumstances as are the convictions obtained against certain members. 1937 Nag. 17 : 38 Cr. L. J. 237 F. B

——the evidence of previous conviction of dacoity and orders under s 110 Cr. P. C. are admissible for the purpose of proving habit and association in a subsequent trial under s 401 I P C. *Above case*

——where several persons are being tried under s 401 of being members of a large gang, the evidence that a big gang was in existence and was committing depredation on the community all over India, [illegible]

——where several persons are being tried under s. 401 for being members of a gang the evidence of association before the period of charge is admissible to corroborate the evidence of association during that period 1938 Mad 858

——where two Sessions cases are started against persons accused under s 401 of being members of a gang it is not only permissible to combine the two trials but is also convenient and proper. There is [illegible] charge is framed in Sessions Court [illegible] of charge sheets are originally [illegible]

[illegible] ing tried under s 401 for being members of a gang proof of association outside British India to commit crimes is not barred under s 188 Cr P C read with s 4 I P. C. 1938 Mad 858

S. 403. Dishonest misappropriation of property

——in a case of alleged misappropriation it is not enough to show [illegible] account [illegible] facts [illegible] the [illegible]

——where the accused received money from the complainant for bribing officers to get a post for the latter, held that no offence of criminal misappropriation was committed because to constitute this offence the money must have come into the possession of the accused innocently in the first instance, nor there was a case of cheating, made out 1936 Rang. 471 1936 Cr. C. 961.

S 403. Dishonest misappropriation of property—*contd.*

mitted, but the offence being a technical one criminal prosecution of this over what was really a civil dispute should be discouraged 42 C W. N 783.

——where the order of the appellate Court staying delivery of certain property was not duly communicated and the party took delivery in pursuance of the lower Courts, order for restoration and disposed of the property, no offence under s 403 was committed 1934 Cal 454 · 35 Cr. L J 886

S. 405. Criminal breach of trust

——every offence of criminal breach of trust involves a civil wrong in respect of which the complainant may seek his redress for damages in the Civil Court but every breach of trust, in the absence of "*mens rea*" cannot legally justify a criminal prosecution It is only by imputing guilty knowledge or criminal intent on the part of the accused that he may be guilty of the offence 1937 Oudh 331 38 Cr. L J 491.

——property obtained by cheating cannot be capable of being fraudulently converted under s 405 The notion of a trust is that there is a person, trustee or the entrustee in whom confidence is reposed by another who commits property to him this again supposes that the confidence is freely given A person who obtains property by a trick from another bears no resemblance to a trustee and cannot be regarded as a trustee under s 405. The essence of the offence is the dishonest conversion But cheating itself involves a conversion and it is a complete offence by itself 1936 Mad 353 : 37 Cr. L J 637 1936 Cr. C 637 F B

——under s 405 the property entrusted or part of it must be ... not ... -ach ... ult ... ver ... vert ... 53 ... ich refers to 13 B L R 307 F B and 6 Bom L R. 553

——the managing agents of an Insurance Company who spend moneys belonging to the company on its business are not guilty either criminal misappropriation or conversion. Where expend is made with the full knowledge of the directors there is no

S 405 Criminal breach of trust—*contd.*

trust or breach of contract, even if it indirectly causes loss to the policy-holders 63 C. 18 37 Cr. L. J 439

——the complainant had taken loan from the accused by having jewels with him and paid off the loan, but the accused, instead of [illegible] the jewels [illegible] that the [illegible] to convict [illegible] generally cases of this kind are not admitted in criminal Courts when there is dispute as to the amount payable 62 C L. J. 487 1936 Cal. 673 1936 Cr. C 930

— [illegible] instalments [illegible] his house [illegible] ly produce [illegible] ter was of [illegible] is machine [illegible] lments If traders pass on their goods to improvident and impecunious persons, they must suffer the loss. The mere non payment of monthly instalments could not be considered as a criminal offence 1936 Cal 674 1936 Cr. C. 931 38 Cr. L J 113

——the onus remains always on the prosecution to prove its case [illegible]

incumbent on the prosecution to prove not only that the accused had [illegible]

Cr C 887.

——the petitioner who had entered into a supurdnama brought the cattle in question to the tahsil and was willing to produce them, held that in such circumstances he could not be held to have dishonestly

S. 405. Criminal breach of trust—*contd.*

used the cattle in violation of the terms of the supurdnama. 1933 Lah 235 34 Cr. L J 1163 1933 Cr C. 355.

——a taking under a colour of right under a *bona fide* claim would not be an offence however much the claim turns out to be unfounded 1933 M W N. 246

——the term "entrusted" is not necessarily a term of law. It may [illegible] and in its most general [illegible] the possession for some [illegible] any proprietary right at [illegible] 935 Cr C 1314 1935 [illegible] 914

——where a person makes use of money belonging to another without the latter's consent, and contrary to the purpose for which possession thereof has been given by the latter to the former, the intention of the person so making use of that money must *prima facie* be dishonest within s 24 The elements of sec 405 may be proved either by direct evidence or by circumstantial evidence 1935 Rang. 453 1935 Cr C 1210.

S 406 Punishment for criminal breach of trust

——if immovable property can be the subject of criminal mis appropriation or breach of trust The general current authority is against it 1932 M W N 1353 (1930 Rang 158, 1926 Lah 478, 6 B H C R 33) *Ref*

——this sec does not embrace the case of a man who has taken an article on hire and fails to produce it There must be some evidence of dishonest action 1932 All 324 I R 1932 All 620 140 I C. 78 33 Cr L J 866

——it is wrong to say that the accused became guilty of criminal breach of trust simply because he became an executor *de son tort* 53 C 1051 35 C W N 425 32 Cr L J 836 F. B

——where in payment of cloth valued at Rs 43—12—0 purchased [illegible] rupee note but [illegible] money was due [illegible] count was settled [illegible] t and no offence [illegible] J 915

——if a surety, to whom property attached by a Civil Court is [illegible]

S 406. Punishment for criminal breach of trust—*contd*

proceeds, he is also guilty under s 406. 1935 Cr. C. 1314 1935 M W. N 914.

——where the owner had handed over the property to the accused years before and had taken no more interest in it, and it was handed over for use with the stipulation that it was to be returned when required by the owner and the owner fell out with the accused who had pawned the property and the owner launched a complaint under s 406, held that in the circumstances of the case it was reasonable for the accused to think that he could pawn the property and so he committed no offence 1935 Rang. 361 1935 Cr. C 1085.

[illegible]

S. 408. Criminal breach of trust by clerk or servant.

——a working partner, who has not contributed anything to the partnership business is a "servant" or "clerk" within s 408 and can be [illegible]

therefore if he pawns it he is guilty under s. 408 1934 Rang 41 · 35 Cr. L. J 788, 6 L B R. 62, *Dist*

——when the relationship of partners exists between the complainant and the accused a conviction for breach of trust is not sustainable 1931 Pat 159 1931 Cr C. 399; 130 I. C. 833 32 Cr L J 620 12 Pat L T. 355

[illegible]

next case.

——if before his accounts have been submitted, an employee who [illegible]

I P. C. 42 C. W N. 618.

S 408 Criminal breach of trust by clerk or servant —*contd*

——it is not necessary for the accused to show exactly what has ... If he cannot ... of his dis- ... 35 Cr L. J. ... as happened ... y justify an ... 1936 Cr. C. 715.

——on a charge of general deficieny in a certain fund handed by the accused scrutiny of each *item is favourable to the accused and he* cannot complain that he has been prejudiced. 1936 Oudh 376 · 37 Cr. L J 911

——an agent whose salary is not paid, and who, therefore, refuses to pay the monies collected by him, cannot properly be convicted under sec. 408, as under s. 221 of the Contract Act, he is entitled to retain goods or other property of his principal until the amount due to him for services has been paid or accounted for to him 1935 All 922 1935 Cr. C 1139

S 409. Criminal breach of trust by public servant, or by banker, merchant or agent

... amounts due and not a prosecution under s 409 1935 Oudh 241, 36 Cr. L. J 477

——when an agent of a firm refuses to render accounts and to allow some of the partners to have access to the account books, it cannot be presumed without further facts being proved that there is an intention to defraud and the agent cannot be prosecuted in a criminal Court. 1937 Rang 505

——the offence of criminal breach of trust by an agent is made out ... rusted with the property ... quire that he should be ... the offence 1936 Pat.

... misappropriate at some future date 1934 Lah 843 1934 Cr C 1184

——a *Mousadar* in Assam who enters into a contract with the Govt. and executes a kabuliyat agreeing to realise Govt. revenue local rates and pay the same into the treasury on or before a fixed date and agreeing that in case of his failure to so pay, the same realised from him as an arrear of rent, is neither a lessee nor a ... but is an agent of the Govt. for collection of the revenue and rates

S 409 Criminal breach of trust by public servant, or by banker, merchant or agent—*contd.*

the money realised by him belongs to the Govt. If he converts such money to his own use he is guilty under s. 409. 40 C. W. N. 1154.

——where a charge is framed against the accused under s 409 for the embezzlement of a particular sum, he cannot contend that the prosecution have failed to prove the embezzlement of that sum, though ... embezzlement of other sums ... ove misappropriation It is ... received the money. The ... secution. 1933 Cal. 800 58 C. L. J. 405 : 1933 Cr. C. 1275.

... case to prove ... hat manner the money or property was ... temporary reten ... r intent to deprive ... o account for the money or giving a false account is generally a strong circumstance against the accused 1936 Pat 350 37 Cr L J. 877 1936 Cr C. 543 Similar case 38 C. W N 467 59 C L J 306 35 Cr L J 1279 1934 Cal 532

——dishonesty which is the necessary ingredient of the offence may be inferred from the surrounding circumstances and the terms upon which the accused had the money in his hands When such money is rightfully in the hands of the accused, mere non-production of it will not, except in exceptional circumstances, amount to the offence under s 409 40 C W N 128 37 Cr. L J 904.

——the accused was Head Accountant of the Aden Settlement Committee Water was supplied by the sale of water tickets in books The accused who was responsible for the sale of these books caused spurious books to be printed and misappropriated the proceeds, held, that no breach of trust was committed but the accused was liable for criminal misappropriation 60 B 148 37 Cr L J. 688 1936 Bom 154

... trust on the sale p ... is delivered unde ... 1932 Sind 169 ... *approved*, (41 C ... B) *Dist* ... ies honestly whether his movements be properly supervised by his superior officer or not and it would be setting a very bad principle if embezzlement by him is condoned purely on account of the negligence of those who

S 409 Criminal breach of trust by public servant, or by banker, merchant or agent—*contd*

were in duty bound to control his action 1934 Lah 677 1934 Cr C 1003

——an agent authorised to lend his master s money commits an offence if he lends to himself without his master's permission 1933 M W N 256

——the Secretary and Assistant Secretary of the Co operative Central Bank ... re sent from other ce ... iracy to comm t crimir ... regard to definite su ... lemned 1938 Cal 697

... 19 8 Nag 445

ss of the land revenue onus is on him to prove r, otherwise he is guilty

S 411 Dishonestly receiving stolen property

——in a case under ss 411 and 414 if the accused satisfactorily accounts for his possess on, the question of the appl cation of the ... then for the ... 129 ... property was ... the same to ... bel eve in ... Oudh 327

36 Cr L J 602

——where tl e prosecution produced no evidence to show that the stolen property was ever in the possession of the accused but he was ...

they should have themselves exam ned tl em Held further that as the stolen property was actually recovered from the co accused it would be quite reasonable to draw a presumption of gu lty knowledge against h m 41 C W N 286

S. 411. Dishonestly receiving stolen property—*contd.*

were innocent, in that case the prosecution is to show at what stage

character is certainly relevant. 1937 M. W. N. 317.

——where three persons are at various times in possession of the stolen revolver, the fact that they are convicted in respect of its

under

and

it the presumption was that they were both in possession of stolen property and this possession not being explained both were guilty 1933 Lah 148 34 Cr. L. J. 604.

——because the distance of time between theft and recovery of the

——it *will not be safe to draw the inference that certain ornaments* are the proceeds of a burglery from the mere fact that they were sold by the accused more than a month after theft. 1933 Lah 987 1933 Cr. C. 1503

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731 *Rel on.*

——where there is no proof whatsoever that the accused had received the proceeds of five different thefts on five different occasions

S 411 Dishonestly receiving stolen property—*contd*

and on the other hand it was more likely that the thief or thieves may have passed on the stolen property to the accused at one and the same time, the accused cannot be convicted under five separate chalans 1932 Lah 615 1932 Cr. C. 921, 1928 Lah 637 *Approved*, 37 Cr. L. J 752

S 412 Dishonestly receiving property stolen in the commission of a dacoity

——to establish an offence under sec 412 the prosecution must let in some evidence to show that the accused knew or had reason to believe that the property was stolen in the course of the dacoity 41 C W. N 639

S 414 Assisting in concealment of stolen property.

——the word believe is much stronger than the word suspect 1932 Lah 434 I R 1932 Lah 586 139 I C 442 33 Cr L J 764

——the intention of the sec is to punish persons who, subsequent to the commission of the offence either conceal it or make away with it by destroying or otherwise dispose of it It penalizes persons who deal with stolen property in such a way that it becomes impossible to identify it or use it as evidence It cannot apply to the case of a man who spends money stolen by another 1935 Lah 587 36 Cr L J 1459

——as stolen property in s 239 (f) Cr P C refers to proceeds of a single theft a person charged under sec 414 I P C, in respect of three white metal ingots where there is nothing to show that they were the proceeds of the same theft cannot be tried jointly with another person in whose possession the articles were found 42 C W N 729

S 415 Cheating

——cheating is a complete offence by itself and not a form of criminal breach of trust 1936 Mad 353 37 Cr L J 637 F B

——in order to bring a case within the second part of sec 415 damage or harm caused or likely to be caused must be the necessary consequence of act done by reason of the deceit practised or must be necesssarily likely to follow therefrom and the law does not take into account remote possibilities that may flow from the act 1934 Lah 833 1934 Cr C 1180

——the seller is not bound to disclose the defects in title in immovable property which the buyer could with ordinary care discover and the concealment of such defect is not fraud But the false representation that the property is free of charge is fraud specially when charge was not registered 1937 Sind 56 38 Cr L J 510

——a man can give delivery through another of property within sec 415 which is not in his possession, but which is at his order 1937 Sind 293

S 415 Cheating—*contd*

——in case of an offence under sec 415 the burden is on the prosecution to prove fraud or dishonesty on the part of the accused Every ingred ent must be proved by the prosecution 1933 Pat 598 1933 Cr C 1360

34 Cr L J 1020

——where the charge ran thus ' that you on or about the third day of November at Karachi cheated the complainant taking Rs 3300 as per award and not acting according to the award held that as the charge did not contain any allegation that the accused acted dishonestly or that he deceived the complainant the charge should be set aside 1933 Sind 169 34 Cr L J 1049

S 417 Punishment for cheating

——where a person is alleged to have obta ned money by cheat ng, the offence comm tted is one under sec 420 and not merely under s 417

evasion of payment 1933 Pat 183 34 Cr L J 1020

S 419 Punishment for cheating by personation

——where long after an alleged offence of cheat ng by personation has been committed a person makes a false statement in order to support the false personation he cannot be conv cted under ss 419 and 109 1935 All 566 36 Cr L J 1031

——where the accused a low class Brahmin falsely represented

——the accused pretended to be one S C a ca id date for the B A. exam nation of the Calcutta Univers ty and wrote answer papers purporting to be answer papers by S C intending that they shall be treated as those written by S C held that the accused was gu lty under ss 419 and 468 The fact that S C could not have poss bly passed the examination as he had failed miserably in other papers was not relevant 40 C W N 956 1936 Cal 403 37 Cr L J 1156

S. 420. Cheating and dishonestly inducing delivery of property.

——where a person pawns bangles discribing them as "gold [illegible]

Rang. 426 : 1935 Cr. C. 1201.

——a person who pays a bill by means of a cheque and gets the bill with the endorsement "received by cheque" duly stamped as a receipt, cannot be held to dishonestly induce another to deliver any property or valuable security within s 420, when later on the cheque is dishonored when presented for payment, nor is the receipt "property" or "valuable security" within s. 420, nor a valuable security under sec 30 I. P. C. 39 C. W. N 1182 · 62 C. L. J 119

——the mere fact that a scheme is of highly speculative nature is not in itself evidence that it is a scheme put before the public to deceive. There must be evidence of some deception. 1937 Sind 58 38 Cr L. J 651.

——where the accused was charged with cheating, which involved the use of a forged document, but was not also charged for forging the document, and the lower Court passed a severe sentence in view of the fabrication, held that the making or fabrication of the document should not be taken into account in determining the sentence. 1937 Sind 293.

——it is not necessary that there should be any words used to constitute false representation. Deception by conduct of the accused is sufficient. 56 Cr. L. J 73

——the mere fact that the accused was in embarassed circumstances at the date of entering into a contract is not sufficient to prove an intention to cheat A man in embarassed condition is not bound to disclose all his circumstances to people with whom he deals on credit, but he is not entitled to make any untrue statement. 56 B. 204 137 I. C. 142 . 33 Cr. L. J 401 1932 Cr C 385

——the question whether an offence has been committed under s 420 does not depend upon the accused's success in swindling of the amount or times that he has managed to obtain property by cheating but depends upon the successful inducement of the person cheated 1936 Cal. 678 1936 Cr. C 935.

——breach of contract or breach of faith only does not amount to criminal offence of cheating punishable under s 420. 1936 Oud. 372 37 Cr. L. J 907.

——a person who extracts subscriptions from the charitably public for charitable institutions and pockets the proceeds does not deserve any reduction of sentence. 1934 Pat. Cr. L. J. 1167 : 1934 Cr C 300

S 420 Cheating and dishonestly inducing delivery of property—*contd*

——snow ball scheme—advancing loans by company—speculative and *risky conditions*, but no misrepresentation or fraud proved—no cheating, 1934 Bom 48 35 Cr. L J 644

——certain persons were being tried for an offence The accused person representing that he could influence the Court, in their favour received money from them, and was prosecuted for cheating. Held that the defence that the money *having been paid for an illegal purpose* a prosecution for cheating could not be maintained, was not tenable 1933 Rang 199 34 Cr. L. J 1255

——a Magistrate who holds only second class powers has no jurisdiction to try a case under s 420 This is a matter which goes to the very root of the case and is not an irregularity which is covered by s 537 Cr P C 1933 Lah 1009 1933 Cr C 1554, 1921 Lah 63, 1925 Mad 367 *Ref.*

S 421 Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors

——[illegible]

property and a fraudulent transfer of such property by an insolvent is an offence under s 421 1936 Bom 167 60 B 706 37 Cr L J 577

S 423 Dishonest or fraudulent execution of deed of transfer.

——where a Jt -Dr executed a *kabala* with a false recital as to the consent of the decree-holder as to *price payable* and *it appeared that* this was done fraudulently with the intention of suporting at a later stage a case of satisfaction of another decree, held that the Jt -Dr was guilty of an offence under s 423 1933 Pat 495 34 Cr. L J 846

S 424 Dishonest or fraudulent removal or concealment of property

——refusing to return property is not contemplated by s 424 1933 All. 46 1933 Cr C 52

——when property is attached in execution of a decree under a process after its returnable date, resistance to it is not an offence under s 424 1933 All 46 1933 Cr C 52, (37 C 122, 25 M 729) *Rel on*

——a person cannot be convicted under s 424 for removing his crops not validly attached 1934 All 711 35 Cr L J. 1307 1934 Cr C 901, 1936 All 364 37 Cr L J. 675 1936 Cr. C. 428.

S. 425. Mischief.

——"wrongful loss" in s 425 means loss by unlawful means 1935 Bom 164 36 Cr. L J. 940 59 B. 177

——one of several co-sharers in constructive possession has no right to dig land and remove earth for his exclusive use and the act amounts to criminal trespass and others can exercise their right of private defence 1934 All. 829 35 Cr. L J 730 1934 Cr. C. 1012

——to cut ripe crops which are grown to be cut is not to destroy them or affect them injuriously and is not mischief. 1934 Oudh 182 35 Cr L J 797 1934 Cr. C 578

221 35 Cr. L J 1304

——there can be no mischief when the facts of the case are such that no one can believe for a mement that there was primarily any intent to damage a particular item of the complainant's property 1937 M. W N 1238

S 426. Punishment for mischief

——where there is no dishonest intention and there is positive evidence that the accused acted *bonafide* in the exercise of a claim of right, there can be no conviction under s 426 or 477 1937 M W N 390

——if the installation of an oil engine by the accused causes damage to his neighbour's house by means of vibration, he would be liable for damages only in a civil suit Working of the engine in one's

be an offence under s 426
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estern boundary of his plot a
an outlet of excess of water
t of way over this passage the

But see 1938 Pat 538

S 427 Mischief causing damage to the amount of fifty rupees

——where there was boundary dispute and the accused cut the eaves of the complamant under a *bona fide* claim of right he was

S 427. Mischief causing damage to the amount of fifty rupees—*contd*

liable to be convicted under s 427 I. P. C 1932 Mad 676 I R 1932 Mad 596 33 Cr L J 655 138 I. C. 608 1932 Cr C 834.

——*where the mortgaged properties were purchased by the* mortgagee decree holder in execution of his decree, demolition of them by the mortgagor before confirmation of the sale is an offence under s 427. *1937 Pat 646*

——where a purchaser is put into possession of fields under Or 21, R 95 he is entitled to cut the crop standing on it and he cannot be *convicted under s 427 37 Cr L J 524 1936 Cal 157 1936* Cr C 302.

S 429 Mischief by killing or maiming cattle etc

——killing by any person of a bull branded after *Shradh* of the complainant's deceased father and fed and kept by him thereafter, is *an offence under s 429 as it does not cease to be the complainant s* property 1937 Pat 406 38 Cr L J 407

S 430 Mischief by injury to works of irrigation or by wrongfully diverting water

——to apply this sec mischief within s 425 must be committed by a person before he can be convicted under s 430 Where the accused did not damage the canal or any of its banks or openings in any manner but only continued to take water from the canal even after the end of their turn there was no offence under s 430 1937 Lah 196 38 Cr L J 430 1934 All 687 35 Cr L J 1250

——where all that was proved was that the accused forcibly opened the canal distributory and they apparently diverted the flow of the water but there was nothing to show that they permanently diminished the utility of the distributory or affected it injuriously or that they practically diminished the supply of water held that the accused were liable under s 70 of the Northern India Canal and Drainage Act and not under s 430 1934 All 687 35 Cr. L J 1250

——the act which causes diminution of water supply need not have been one of wanton waste or prompted by a malicious motive If the cutting is without right and its result is diminution of supply to the complainant the offence under the sec is complete 1932 Pat 224 1932 Cr C 407 33 Cr L. J 313

——to throw a bund across a supply channel is to destroy its utility as such and constitutes mischief 1933 M. W. N. 427

S. 441. Criminal trespass.

——possession referred to in s. 441 is physical and not merely constructive possession. 1933 Sind 396.

——possession implies dominion and consciousness in the mind of the person having dominion over an object that he has it and can exercise it 1933 All. 437 34 Cr. L J 930 1933 Cr C 743.

——the words "with intent" in s 441 do not mean "with knowledge", there is distinction between these two phrases 1933 All. 816 1933 Cr. C. 1415

——although a member of a joint family does not commit an offence of criminal trespass by entering the house which forms the joint property he may be guilty of that offence when he enterd the room ordinarily occupied by some other member. 1933 Sind 396 1933 Cr. C. 1436, 5 W R *Cr* 6 *Rel on*

——an unlawful entry followed by unlawful continuance of occupation is punishable under s 441 1933 All 816 1933 Cr C 1415 1928 Pat 124, *Rel on*

——when a person under the order of his employer enters upon [illegible]

any kind of property either movable or immovable and includes a *ferry boat* 38 *C W N 665* 35 *Cr L J 949* 1934 *Cal 480*

——the word intimidate must be understood in its ordinary sense to overawe, to put in fear, by a show of force or threats or violence and it may include use of actual force unaccompanied by threats 1934 Pat 158 35 Cr L. J 142 1934 Pat 158

——the essence of the offence is the intention to do one or the other of the acts spicifically referred to in s 441 If such is not the intention of the accused but his [illegible] dispute is with intent to assert [illegible] it may or may not amount to [illegible] Cr L J 244 1936 Cr C 1 [illegible] 1935 Sind 20 36 Cr L. J 577 [illegible]

S 442 House trespass

——a ferry boat cannot be held to be a 'vessel', in the absence of evidence that the boat was ever used as a human dwellings. 38 C. W N 665 1934 Cal 480 35 Cr L J 949 1934 Cr C 688

——even when the complainant is temporarily absent from his house at the time when forcible entry is effected into by the accus [illegible] It can [illegible] eye

S 447 Punishment for criminal trespass

——labourers who were asked by a trespasser to sow the fields trespassed upon cannot be convicted under s 447, in the absence of evidence that they were aware of the true state of affairs and having entered into a conspiracy with the trespasser had made an attempt to further his cause 1934 All 1025 1934 Cr C 1335

——trespass in respect of a ferry boat is punishable under s 447 and not under s 448 unless the boat was ever used as a human dwelling 38 C W N 665 1934 Cal 480 35 Cr L J 949

——the complainant who was a tenant and liv ng in the house of the accused left the premises when the house fell down The accused entered upon the vacant land held that he was entitled to do so as owner of the land and that no offence was committed by him 1933 Lah 734 34 P L R 953

——standing on the Municipal *Chabutra* to prevent the Congress flag from being removed is not criminal trespass 1937 Oudh 207 38 Cr L J 147

——where there is a dispute with regard to a wall and there is false attempt to bolster up title and there is an entry upon the land and actual demolition of the wall there is quite certainly an intention to commit mischief 1935 Sind 203 1935 Cr C 1122 1925 All 540 *fol*

——possess on given even for a few minutes in execut on of decree const tutes possession under s 447 28 Nag L R 298 34 Cr L J 145 1933 Nag 36

S 448 Punishment for house trespass

——where the naz r d d not deliver actual possess on of the house to the auction purchaser at certificate sale but simply caused a beat of drum and put up a notice and in the meantime the certificate debtor took steps to set aside the sale and entered the house he was not gu lty of house trespass 1935 Pat 355 36 Cr L J 860 1935 Cr C 985

——where the trespass was done with the intention of asserting a supposed legal right the accused was not guilty of criminal trespass 37 Bom L R 880

——the intention cannot be assumed from the fact that the accused was caught in the room at night 1935 Pat 523 36 Cr. L J 1351

S 457 Lurking house trespass or house breaking by night to commit offence

——going on to the roof of a house is not entering a building 1933 Lah 433 34 Cr L J 1181

hould not be released

on 137 I C 716 I R

193 3

session of the stolen property a couple of hours after the commission of the burglary Ill (a)

S 457. Lurking house-trespass or house-breaking by night to commit offence—*contd.*

to s 114, Evi Act applied and the accused could be convicted under s. 457. 1933 Oudh 117 34 Cr L J 649

——an accused makes the movement towards committing the offence under s 457, at the time when he begins to move up the wall by climbing it and it is not necessary that he should climb twice. 1934 All 833 1934 Cr C 1027

——the offence of house trespass is completed by the accused putting his hand across the top of the railing and the offence under

pattis on the

the top of the

also inflicted

grievous hurt in the Court-yard, but it was not clear whether the Court-yard was a part of the house in which the criminal trespass has been committed, held, that the accused should have been convicted under s 457 and not under sec. 459 38 C. W. N 446 1934 Cal. 557 1934 Cr C 789

——technically the offence of being member of a gang associated for the purpose of committing burglaries is different from that of actually taking part in them but separate sentences though legal are not strictly equitable 1932 Lah 298 33 Cr L J 251 1932 Cr C 378

S 460 All concerned in lurking house-trespass or house breaking are punishable when death or grievous hurt is caused by one

——where a number of armed persons entered a house at dead of night with intention to abduct a woman and some attacked an inmate resulting in death and some caused grievous hurt to others held that they were all guilty under s 460 and not under s 302/34 or under s. 304 1936 Lah 911 1936 Cr C 1009

——where murder is committed in a house with the object of stealing the valuables belonging to the deceased, if any of the accused persons are guilty, they would certainly be guilty of murder and not only of an offence under s 460 1934 All 1032 1934 Cr C 1339

——where in a case of deliberate murder with the object of committing robbery there were no extenuating circumstances and the accused were not charged owing to some mistake with the offence of murder but were tried and convicted under s 460, a sentence of transportation for life is the only appropriate sentence. 1934 All 1032. 1934 Cr C 1339

S 463. Forgery

——a school teacher altering the dates in a diary, required to kept regularly, with the intention to obtain an advantage to would constitute fraud and the teacher would be guilty under s. 1936 Rang 380 : 37 Cr. L. J 1059.

S. 463. Forgery—*contd.*

——an intent to commit fraud involves an intent to cause injury. It involves something more than mere deceiving. Where a process-server forged names on the notices with a view to save himself, from the consequences of his neglect of duty or to save himself from trouble, held that it did not amount to intent to commit fraud. 1935 Rang. 203 36 Cr L J 1025.

——a Police-Sub Inspector who was charged with having caused

1931 Cr C. 777

——proof of fraud by positive and express evidence cannot be expected in majority of cases of forging a document or writing and in such cases circumstantial evidence is the only means available, but no conviction can rest on mere suspicion or conjecture. 1933 Lah 308 34 Cr L J 714

——t is hardly
imitate the forged
consequently a spec
from the disputed
comparison 1933 Lah 308 34 Cr L J 714 · 1933 Cr C 542.

S 464 Making a false document.

——the definition of a false document shows that for forgery a signature must be made by a person who knows that he has not got authority from the person whose signature he purports to make on it. Where a person is present when his signature is made by another on a document, the former must be held to have authorised the proceeding and there can be no question of want of authorisation or forgery in law 1935 All 410 154 I C 517 1935 A L J 651.

S 465. Punishment for forgery.

——the maker of the part of a forged document is also guilty and it is immaterial whether he was present or not at the time of completion of the document 26 Sind L. R. 105.

——a conviction for forgery cannot be sustained merely on the evidence of handwriting expert. 1932 Cr. C. 628 1932 Lah. 490 138 I. C. 368 33 Cr L J 593

——alteration of an electoral roll after its final publication may amount to an offence under s 193 or 465. 39 C W. N. 20 : 36 Cr. L J 385. 1934

——when
over limitation
not take an ur
would be sufficient. 1937 Nag. 89. 38 Cr. L. J. 233

S 467. Forgery of valuable security, will etc.

——this sec provides punishment for forgery not only of a document purporting to be valuable security but also of any document purporting to give authority to any person to receive or deliver any money 1933 Pat 488 1933 Cr C 1030 34 Cr L J. 892

—— o constitute an offence under s 467 or 471 I. P C the nature of the user is not material 59 C 1233 36 C. W. N 505 33 Cr L J 685 55 C L J 349 1932 Cr C 337

——ord narily in determining whether a document is forged or genuine comparison of handwriting is a valuable aid. 1933 Pat 481 34 Cr L J 828 1933 Cr C 1010

——when the accused has not denied his handwriting but has on

forgery cannot be sustained merely on the evidence of a handwriting expert 1932 Lah 490 33 Cr L J 593 1932 Cr C 628

S 471 Using as genuine a forged document

——if a document is produced and put in evidence by the prosecution and the pleader of the accused cross examines the witness upon this evidence the cross examination cannot be held to be used within s 471 39 C W N 1309 1935 Cal 687 1935 Cr C 1079

——the production of a certified copy of a forged document is a use of the document so as to constitute an offence under s 471 1932 Sind 90 33 Cr L J 452 1932 Cr C 530 137 I C 341

— I P C the nature of tl e W N 505 55 C. L J C 705

——for the purposes of this sec the filing of a document as the basis of a plaint is 'user whether that document is acted upon by the Court or used in evidence or not and wl etl er the party files the docume it personally or by legal represei tat ve 1932 Cal 545 55 C L J 336 140 I C 544 1932 Cr C 545

——fil ng receipts in Court to prove payment of rent alleged to be due w thout attempting to prove them amounts to user 1935 All 521 36 Cr L J 1199

—

mere

Court

—

fraud 1932 M W N 117

——promissory note entrusted to vak l s clerk for fil ng suit filed after lim tation period with an endorsement found to be

S 471 Using as genuine a forged document—*contd*
offence is under s 193 I P. C which requires complaint under s 195 (1) (b) Cr P. C and which cannot be avoided by styling the offence under s. 471, I P. C. 1933 Mad 413 34 Cr L J 800 1933 Cr C 566

S 476 Counterfeiting device or mark used for authenticating document or possessing counterfeit marked material

——where A on behalf of his tenants sent an application for agricultural loan bearing the signature of the tenants but actually signed by him, and similarly the receipt and security bonds were signed by him but the money was received by the tenants and duly returned to the Govt held that though A by impersonating the tenants practised deception, yet as there was no gain or advantage to him nor any loss or injury to the Govt he was not guilty under s 476 or s 420 1933 Rang 114 34 Cr L J 922

S 477 Fraudulent cancellation destruction etc of will authority to adopt or valuable security.

——in order that the accused may be *prima facie* guilty of offence under s 477, the document destroyed must amount to a valuable [illegible]

in deciding whether there was a secretion of the will under s 477 If there was no secretion in fact then nothing further need be considered whether the conduct of the accused was secretion in law 58 Cr L. J 283

S 477-A Falsification of accounts

[illegible]

acquired by unlawful means it amounts to a false document and the person making the document is guilty of forgery and can be convicted under s 477 A 1933 All 525 34 Cr L J 1056 1933 Cr C 850 (11 M 411, 22 C 313 35 C 450, 37 B 666) *fol*, (1922 All 214, 5 All 221, 8 All 653) *Dist from*

——the subsistence of partnership between the parties is no answer to a charge of falsification of accounts by one partner who is in charge of the books 36 C W N 303 1932 Cr C 451 1932 Cal 464 138 I C. 338 I R 1932 Cal 447 [illegible]

S 477-A. Falsification of accounts—*contd.*

complainant's father, a partner of the complainant's farm, it was the duty of the prosecution to call some of the partners to give a positive denial of the allegations of the accused and that not having been done, the conviction should be set aside 59 C L. J. 83; 1934 Cal. 500 1934 Cr. C 712

——falsification of accounts by servant—accounts not made over to the employer who is many thousand miles away in another country —no offence under s 477-A. 1936 Rang 299 1936 Cr. C 631

——a person who is acting as agent for another, who is living many thousand miles away in another country cannot be described as "servant" 1936 Rang 299 1936 Cr. C 631.

S. 478 Trade-mark.

——the expression trade mark as defined in s. 478 includes the whole design on the box and the label pasted on it Where therefore there is no dispute in the fact that there is a striking similarity in the design of the complainant's bottle and that of the accused, it is perfectly clear that the accused has used a false trade-mark within the meaning of s 482 1932 Sind 94 33 Cr. L J 778, 24 I C. 834, 30 I. C 1007, *Ref.*

S 480 Using a false trade mark.

——the physical resemblance between the two marks must be taken into consideration There must be some inherent similarity in the marks themselves which justifies the use of the same name for both 1936 Rang 95 37 Cr L. J 5.8, 31 C 411 *Rel on*

——meaning of using false trade mark 1932 Sind 94 139 I C 335 I R 1932 Sind 119 33 Cr L J 778

S 482 Punishment for using a false trade mark or property mark

[illegible]

trade marks or the paintings on them should be identical It is enough that there is such similarity between the two that an unwary customer may not be able to distinguish the one from the other It is not necessary that any one should in fact have been deceived 1936 Pat 579 1936 Cr C 950

——where the offence of infringement of a trade or property-mark is a continuing one, and no discontinuance is proved, the time for prosecution under s 15 of the Merchadise Marks Act (the offence also falling under s 482) runs from the first instance of infringement or from the first discovery of infringement 1935 Bom 359 59 B 551, 36 Cr L J 1372

S. 486. Selling goods marked with a counterfeit trade-mark or property-mark.

——s. 486 also applies to a retainer who connives with a fraudulent wholesaler or manufacturer in palming off on unsuspecting public goods which purport to be other than what they are. But where there is no attempt to pass off the one as the other and no attempt at substitution there can be no conviction. 1937 Nag. 341 : 20 N. L. J 183.

——the burden of proof under sec 486 is on the accused. It is true that proviso (b) as a defence available to an accused is linked with proviso (a) but the fact that the accused gave all information is admissible in considering whether he acted innocently or not. *Above case.*

——no trader has a right to use trade-mark so nearly resembling that of another trader as to be calculated to mislead unconscious purchasers. The test is whether an ordinary unwary purchaser would be deceived. A person who employs label generally resembling the label used by another, is guilty under sec. 486 although the registered trade-marks are different. 1934 Lah. 687 : 1934 Cr. C. 1005.

S. 489-B. Using as genuine forged or counterfeit currency-notes or bank-notes.

——no guilty knowledge or intention can be inferred from the mere circumstance that the accused was found in possession of a counterfeit currency-note. 1933 Lah. 596 : 34 Cr. L. J. 1656 : 1933 Cr. C. 881.

S. 494. Marrying again during lifetime of husband or wife.

——[illegible]

——[illegible]

——where the prior marriage of the woman was in secrecy which the second husband could not be expected to know, he could not be convicted for abetting bigamy. 1933 Lah 164 : 1933 Cr. C. 309

——if a Mahomedan woman who has exercised the option of puberty were to contract another marriage, believing that she was [illegible]

bigamy. 1932 Lah. 116 : 1932 Cr. C. 96.

S. 496. Marriage ceremony fraudulently gone through without lawful marriage.

——to establish a charge under s. 496 it is not enough to show that the marriage may be set aside on the ground of fraud or declared a nullity; the prosecution is to prove that the accused knew that there was no valid marriage and he has gone through a show of marriage with a fraudulent or ulterior object in view 41 C W. N. 540 1937 Cal 214· 31 Cr. L. J 577 F. B

S 497. Adultery.

— be strictly proved, and presumption of marriage years 1934 Sind 10 35 sumption against the validity of the marriage can be raised unless there is at least some suggestion that a particular part of the ceremony essential to its validity was lacking 1937 Pat 219 38 Cr L J. 213

——where the husband was driven out from his house by his wife and supplanted by the accused with whom the wife lived, but the husband preferred no complaint promptly and after 18 months filed a held that the 1934 Sind 10

— 368 fulfils all the ltery is proved a conviction under s 497 will not be illegal for want of complaint under s 199 1934 Lah 945 1934 Cr C 1333

——in the absence of any statement that adultery has been

re-marriage is generally recognised by custom it is sufficient if the conditions essential by custom have been fulfilled and the widow becomes a remarried wife of the person to whom she is married within ss 497 and 498 1937 Sind 42 38 Cr. L. J 369

S 498 Enticing or taking away or detaining with criminal intent a married woman

——the word "detains" means "keeps back" But there may be various ways of keeping back force, it may be by persuasion or Where a married woman was tak brother and was given in *natra* husband was not guilty of an offence under sec 498 1933 Bom 1933 Cr C. 1593, 1937 Bom 186 38 Cr L J 769.

——it cannot properly be said that a man detains a woman if latter has no desire to leave him and on the contrary wishes to stay

S 498. Enticing or taking away or detaining with criminal intent a married woman—*contd.*

him. Where a married woman, who has been discarded by her husband, leaves her father's house of her own will and elopes with the accused, having fallen in love and becomes intimate with her, it cannot be said that the woman has been taken or enticed by the accused or that she is detained or kept back by the accused from her husband or father. 1937 Bom. 186 · 38 Cr. L J 769

——the word detain must be construed *ejusdem generis* with entice-

[illegible]

t cannot mean taking by

A case under sec. 498 is

-I personally and actively

usband's house or from the

custody of any person who was taking care of her on behalf of the husband The taking must be with the "intention" stated in the sec 39 C. W. N 1280 1935 Cal 677 : 1935 Cr. C. 1069

——in cases under s 498 the fact that the girl went away of her own accord is immaterial 39 C W N 1280 1935 Cal. 677 : 1935 Cr. C. 1069 The mere fact that the wife may have willingly gone to the accused or that she consented to live with him would not be sufficient to take the case out of the sec 1934 Sind 72 35 Cr. L. J. 1254 1934 Cr C. 625

——there must be some tangible evidence of taking or enticing. The mere fact that the wife went away of her own accord from her husband's house, and was accompanied a part of the way by the accused, is not sufficient to show that the accused took or enticed the woman away 1935 Cal 345 1935 Cr. C. 484 37 Cr. L J 73

——the mere fact that the girl is living in the same house with the accused does not prove that she was enticed away by any or all of them 1934 Lah 86 35 Cr. L J. 1032

——the word "conceals or detains" must be taken to extend to the enticing or inducing a wife to withhold or conceal herself from her husband and assisting her to do so, as well as to physical restraint or prevention of will or action 1934 Sind 72 35 Cr L. J 1254 · 1934 Cr. C. 625.

S 498 Enticing or taking away or detaining with criminal intent a married woman—*contd*

——the enticing must be from the control of the husband Where the wife feeling a preferential fondness for the accused, drove the husband out of the house and then permitted the accused to visit her and even to live with her, held that the accused was not guilty. 1934 Sind 10 35 Cr L J 816

——where it is established that the wife of the complainant was provided with shelter

shelter for her was an

husband This conduc

within s 498 even thoug the woman had been carrying on an illicit

taken There must be evidence that the woman was acting as a free agent throughout 65 C L J 421 41 C W N 931 38 Cr. L J 986 1937 Cal 460

——the taking of a girl from the care of her mother with her mother's consent is not taking or enticing away within sec 498 37 Cr L J 1155 39 C W N 1055

that the husband was

neither ill nor was there any circumstance justifying complaint by father, held that the complaint could not be entertained 1933 Cal 144 34 Cr L J 290 1933 Cr C 2-5

——sec 199 Cr P C was intended to discourage under s 498 I P C unless the husband or in his absence on his behalf feels himself to be injured sufficiently to institute proceedings The objection under sec 199

S. 498. Enticing or taking away or detaining with criminal intent a married woman—*contd.*

irregularity so as to be cured by s 537. 38 C. W. N. 113 : 1933 Cal. 880 34 Cr. L. J 1092 · 1933 Cr. C 1530. The husband's statement that the complaint was made with his consent will not cure the defect. 1934 Lah. 122 : 1934 Cr. C. 239.

——where the [illegible]
been celebrated in
applicable to the [illegible]
38 C. W. N. 113 [illegible]
1092.

S 499. Defamation.

[illegible]
f
F
e.
81 36 Cr. L. J 881.

——the essence of defamation is the publication of an imputation with the knowledge that it will harm the reputation of the person defamed 1935 All 743 36 Cr. L J. 816

——the question of immunity of witness from a charge of defamation must be decided by the Penal Code and the Evidence Act and not by an [illegible]
c
J'
38 Cr L J 775

——a member of the bar in this country has no absolute privilege, but in practice the Courts have held that an advocate is entitled to special protection 1932 Bom 490 : I. R 1932 Bom 487 139 I. C 275 33 Cr L J 740 1932 Cr. C. 614 34 Bom L R 910

——the presumption in the case of pleaders asking questions in cross examination is that such questions are put in good faith for the protection of his client's interests within the exception to sec 499 1933 Cal. 185 1933 Cr. C. 231.

——presentation of a petition to a Sub-Inspector of police by the residents of a certain locality making certain allegation against a person, which are alleged to be false and praying for protection against him amounts to, if at all, to an offence of giving false information to a public officer, or making a false accusation, punishable under s 182 or s. 211 I. P. C and does not amount to an offence under s. 500, though some part of the acsusation may be defamatory. 1938 Mad. 904, 19 B. 340, 1917 Cal 708, 1935 Rang 163 *Rel on.*

——general allegation of misconduct against rival candidate in election manifesto if defamatory. 55 Mad. 791 · 33 Cr L. J 665 I. R. 1932 Mad 598 138 I. C 604 1932 Cr. C 515 1932 Mad. 511.

S 499. Defamation—*contd.*

——a newspaper editor is not in a better position in regard to the law of defamation than a private individual Duty of editor defined. 1933 All 434 1933 Cr. C. 740 34 Cr. L J. 926

——a printer is liable under the law for defamatory matter printed by him. *Above case*

——a corporation may maintain a prosecution or an action for a libel affecting its property, but not for a libel merely affecting personal reputation, as a corporation has no reputation apart from its property or trade It cannot bring a prosecution for words which merely affect its honour or dignity. 1935 Rang. 108 36 Cr L. J 953 1935 Cr. C. 317

——if a person complains that he has been defamed as a member of a class, he must satisfy the Court that the imputation is against him personally and that he is the person aimed at If a well defined class is defamed each and every member of that class has a right to file the complaint But if the words reflect impartially on either A or B or on some one of a certain class or number, and there is nothing to show which one was meant, no one can complain or sue 1937 All 677 38 Cr L. J 1086, 1935 All 743 36 Cr. L J 816 1935 Cr C 887

——a distinction should be drawn between a statement in an attempt to praise one's ownself and a statement to cast reflection on another 1936 All 143 37 Cr L J 258

——for publication it is sufficient if the accused intentionally does an act which has the quality of communicating the alleged libel to a third person or persons generally. 1933 All 210 34 Cr. L J 952, 7A 205, *Dist.*

——the delivery of a letter containing defamatory matter to the complainant written by the accused is not such a publication as would render the accused liable under s 500 because the letter cannot injure the complainant in the estimation of others 61 C L J 205 1935 Cal 736 1935 Cr. C 1188

——false report to police by a woman of insult and outrage by the servants of the complainant—prosecution for defamation is not barred by s 211 I P C 1936 Nag 241 1936 Cr C 1035

——in a prosecution for imputing unchastity to a married woman, the burden is on the accused to establish his plea of justification 1937 Nag 122

——no man can ever be justified in disseminating defamatory matters unless he can bring himself within one of the exceptions to s 499 or unless his action is privileged in other respects Having held that a person did not act in good faith it must be wrong to say that he was justified in acting as he did 1938 Rang 394

Exception 1.

——under the first exception, the accused has to establish not that the imputation was for the public good but also that it was

S 499 Exception 1—*contd*

Whether the accused had good reason for believing the imputation to be true would be relevant to the question of good faith in Expns 8 and 9. 1933 Sind 403 34 Cr. L. J. 667.

Exception 9.

——a person who brings to the notice of the panchayat the behaviour of a person who is guilty of a social offence comes under Exceps 9 and 10 1933 Oudh 377 1933 Cr C. 1094

——in the course of an election campaign the accused issued a poster against his rival candidate headed, "the hollowness of Mr —'s capacity as a barrister has been exposed", held that the accused was not protected by Fxcep 9. 1936 Lah 294 37 Cr L. J 1033

——where the object of the accused is not to defame the complainant but to protect certain trust fund, the accused is protected by the exception 1937 M W. N 884

——if a person receives information that other persons are about to do him harm, he is surely entitled to go to the police and ask for protection, hence there cannot be prosecution for defamation for reporting to police 1935 Rang 297 36 Cr L. J 1307.

S 500 Punishment for defamation.

——a prosecution under s. 500 I. P C, of the complainant in a Criminal case at the instance of the accused on the ground that the former had brought a false charge of theft against the latter of which he had been acquitted cannot be refused or quashed on the ground that it had the intention or effect of avoiding s 195 Cr. P C when no sanction was asked for or refused 42 C. W N. 674, (44 C. 970. 21 C W. N. 253, 111 I. C. 433) *Dist*, 48 C 388 · 24 C. W. N 982 Sp B *Ref*.

——every publication or circulation of libel constitutes a fresh and distinct act and therefore a separate offence 1935 Nag 90 · 36 Cr. L J 744

——where the defamation was an extremely malicious one and the means of publication were chosen with great cunning, held that the sentence of fine of Rs 400, in default six months imprisonment, was not excessive 1935 Rang. 484 · 1935 Cr. C. 1258

S 503. Criminal intimidation.

——where a prosecution under s. 506 was based upon a letter written to the complainant by a solicitor under instruction from the accused warning him of the consequences of continuing to issue circulars [illegible] he [illegible] nant [illegible] the [illegible] N.

S. 503. Criminal intimidation—*contd.*

——a mere threat, uttered as an exhibition of bad temper or in the course of an altercation, is not necessarily an offence under s 189, it may amount to criminal intimidation under s. 503 1936 All 171. 37 Cr L J 212 1936 Cr C. 191.

——threat of excomunication or social boycott and threat of labour boycott cannot be treated as direct injury. 1933 M W. N 736

——a person by becoming a member of a society submits himself to the authority of the general body A proposal by the Managing Committee to refer to the judgment of the general body an act done by one of its members cannot be regarded as a threat to cause any illegal harm 1933 Sind 196 1933 Cr. C. 711, (30 C. 418, 1923 Cal. 590) *Dist.*

S 504 Intentional insult with intent to provoke breach of the peace

——s 504 provides a remedy for abusive and insulting language and it requires an intention to insult and thereby to give provocation and an intention that such provocation should cause or the knowledge [illegible]

——the intention required by s 504 may be inferred from the [illegible] section [illegible] person [illegible] 61 C [illegible]

——the case is not taken away from the purview of sec 504 merely because the insulted person exercised selfcontrol or being terrified by the insult or overawed by the personality of the offender, did not actually break the peace or commit another offence. 1932 Lah 480 33 Cr L J 548

——in order to substantiate a charge of insult the words must amount to something more than mere vulgar abuse 56 B 106 34 Bom L R 282 1932 Bom 193 137 I C 186 33 Cr L J 463

S 505 Statements conducing to public mischief

——s 505 and other sections of the same kind which deal with the liberty of the subject must be construed very strictly in favour of the defence 40 C W N 1218

——sub sec (c) is a very narrow one, intending to be direct towards preventing clashes between rival communities and rival cl[illegible] It is intended to deal with real classes and real communities and [illegible] not apply to purely imaginary people A person who delivers a s[illegible] inciting would be strikers against black legs is not guilty of an [illegible] under s. 505 (c). 40 C W N. 1218

S. 506. Punishment for criminal intimidation.

——a farm cannot commit an offence under s 506 and the directors cannot be prosecuted as representatives of the farm when there is nothing to connect them with the offence. 41 C. W. N. 831 : 38 Cr. L J. 974 1937 Cal 367.

——a proposal by the Managing Committee to refer to the judgment of the general body an act done by one of its members cannot be regarded as a threat to cause any illegal harm. 1933 Sind 196 · 34 Cr. L. J. 884 1933 Cr. C 711, (30 C 418, 1923 Cal. 590) *Dist.*

S 511. Attempt to commit offence punishable with transportation or imprisonment,

——intention alone or intention followed by preperation are not sufficient to constitute an attempt. But intention followed by preparation followed by an act done towards the commission of the offence are sufficient Where the accused intended to administer something which was capable of causing a miscarriage and the evidence showed that he administered a harmless substance, held, that he was not guilty of an attempt to commit an offence under s 511. 37 C W. N. 1151 1933 Cal 893

——distinction between preparation and attempt—possession of opium with intent to transport amounts to preparation and not attempt to commit an offence. 1932 Mad. 507 33 Cr. L. J. 582 · 1932 Cr. C. 511.

ADDENDA.

CR. P. C.

Ss 54 and 56.

——the issue of a written order under s. 56 does not limit the power conferred by s 54. 1938 Pat 229, (1926 Pat 424, 1937 Bom 56) *Rel on*, 1932 Pat. 171 *Dist*

S 88

——where the property of a Hindu absconder is attached, the [illegible] and unmarried [illegible] person claiming [illegible] it without going [illegible]

S. 100.

——where husband filed complaint under s 497 I. P. C against persons carrying on intrigue with his wife who was living with her mother, and there was no allegation that she was being detained there against her will, the issue of warrant under s. 100 for her arrest is illegal 1938 Cal 704.

S 103.

——where the search witnesses were found to have been previously convicted and one of them had a civil suit against the accused, the manner of search amounted to violation of law 1938 Cal 701.

——every process in conduct of search must be witnessed by search witnesses 1938 Pat 403 **F B**, 1930 Bom 169 *Rel on*

——where no written order to attend and witness search has been issued no person is bound to render assistance in making search. The fact that they voluntarily attend and witness the search does not make them bound to sign the search list. A search can not be made in writing and the observation of physical facts can be proved by oral evidence 1938 Pat 403 **F B** 34 M 349 *Approved*

S 107

——the jurisdiction of a Sub-Divisional M is confined to his own sub-division 1938 Nag 448, (1921 All. 123, 1935 Pat 131) *Rel on.*

——this sec is intended not to punish persons for anything they have done in the past but to prevent them from doing anything that might occasion a breach of the peace. 1938 Cal. 583 (9 C. W N. [illegible] 1930 All 408, 1931 Lah 191) *Rel on*

——omission by a M in a complaint under s 107/145 to draw the necessary original order under s. 145 (1) and to affix its copy spot under s 145 (3) vitiates all the proceedings. 1938 Lah 345.

S. 109

——s 109 ... restr ... of libert ... and must be applied only ... ceal ... eal ... 165. ... 69).
Ref.

——cl (a) does not include isolated act of concealment. Person arrested under s 55 Cr. P C do not necessarily come under cl. (a) but come under cl. (b) The words "has failed to give satisfactory account of himself" mean satisfactory account of himself generally 1938 Cal 409 *contra* It is not general account of himself but account of himself in relation to the circumstance in which he is called on to give such account. 1938 Nag. 303

——no order can be made under this sec on the ground that it is not safe in the interest of justice to allow the accused unrestricted liberty. 42 C. W N. 816.

S 110

——a person against whom proceedings are taken need not be ex-convict 1938 Mad 482, 1938 Lah 428, and the finding that the person proceeded against is habitual criminal cannot be based on criminal cases in which he is discharged 1938 Mad 591.

——evidence of police witnesses as regards general reputation should not be excluded, similarly the evidence of stranger. 1938 Mad. 591.

——evidence of reputation must be viewed with caution 1938 Mad 482

——the sec is not confined to cases in which the parties are strangers to the locality 1938 Mad 482

——a man cannot be said to be any the less dangerous to the community because he lives in a house and owns land, and is a leader of a ... each of the peace. 1938 Mad ... 352, *Expl.* ... materials for initiating proc. ... Cr. L J. 811, 1924 Cal. 114 *Ref*

S. 117.

——when a person executing a bond under s 117 (3) dies proceedings against him necessarily ceases and proceedings under s. 514 against his sureties may be taken The sureties being jointly and severally liable cannot be liable for more than that sum 1938 Nag 275.

S. 133.

——this sec does not apply to long standing obstructions but only to unlawful obstructions lately built in public place It cannot be used.

S 133—*contd*

as substitute for civil litigation in Civil Court. 1938 Lah 523, (1935 Lah. 28 and 1926 All 157) *fol* (1931 Lah 159 32 Cr. L. J. 1234) *Diss.*

—when a M. orders a party to remove obstruction or appear before him to have the order set aside or modified and the party appears, he cannot, at that stage, send the case for disposal to another Magistrate 1938 Lah 323

S. 139-A.

—a Magistrate cannot order either side to bring civil suit 1938 Nag 512 39 Cr L J. 791, 1930 All. 658, *Rel. on.*

S. 144.

—an order under s 144 does not establish possession, 1938 Pat. 369 nor the rights of either party but when the history of the property is in question the proceedings and its conclusion may be referred to. 1938 Pat. 455

—Adi-Dravidas taking procession through the locality of caste residents—order under s 144 when can be made 1938 Mad 714.

S 145.

— [illegible] l not possessio [illegible] Cal. 344, 3 C [illegible]

— [illegible]

Rang 229

—the M is not bound to summon witnesses whom he does not require 1938 Rang 229 38 C 24 *Rel. on* 30 C 508 *Ref.* 1930 All 319 *Diss*

[illegible]

1937 Pat 413 *Rel on*

—crops cut and severed from the land are from their very nature 'movable property' and not "immovable property" to which alone sec 145 applies 1938 Pat 527, 1928 Sind 68 *Dissent.* 30 C. 110, *Rel on*

—orders under s 145 partake the nature of interim proceedings in a Civil Court 1938 Sind 132

S 147

—a M. has no power under sec 147 to make an order in [illegible] nature of mandatory injunction directing removal of an alleged [illegible]tion He can do that under sec 133 1938 Nag 297, (1925 C [illegible] 1937 Cal. 513) *Rel on*, 1929 Pat *Dist.*, 1930 Mad 805 *Diss*

S 147—*contd.*

——a dispute relating to offerings does not come under s 147, but a dispute regarding right to worship as *pujari* in temple comes within s 147 1938 Mad 537.

S. 162.

[illegible]

All 571.

S 164.

——a statement under s 164 always raises a suspicion that it is not voluntary 1938 Pat 290, 27 C 295 *fol*

——when a Magistrate records a confession but does not append his certificate, the confession is admissible if the M deposes as to [illegible]

P C 253) *Rel an*

——the fact that the person who made the statement under sec 164 is the person in Court can be proved by the police officer who recorded the statement and the trying Magistrate need not be examined 1938 Lah 477

S 173

——an order of a M on police report that a case be struck off is an administrative order and not a judicial order and so the accused is not entitled to a copy of such order as of right 1938 Lah 469 1933 Pat. 242 *fol* 1932 Pat 72, *Expl.*

S 177.

——the jurisdiction of the Court is determined by the place where conspiracy was formed or made and not by the place where acts in pursuance of the conspiracy is done. 1938 Sind 108.

S 188

——when several persons are being tried under s 401 I P. C for being members of a gang proof of association outside British India to commit crimes is not barred under sec 188 read with sec 4 of the I P C 1938 Mad 858

S 190

——there is nothing in sec 190 which prevents a sub-divisional M from taking cognizance of an offence that happens to be reported to him by an officer who presides in a Court of justice. 1938 All 449

S 195.

——meaning of the expression "Court to which appeals ordinarily lie" in s. 195 (3) 1938 Lah. 641, (30 C 394, 26 M. 656, 1920 Lah. 479, 1929 Cal 172) *fol*

——irregularity in complaint made by one Court to another is curable under sec 537 (a), and if the person against whom complaint is made does not avail himself of the remedies open to him before trial begins, he cannot after trial argue that the complaint was not valid complaint 1938 Nag 487, 1927 Oudh 326 *Commented upon.* (1938 Pat 99, 1929 Cal 203 *Rel on*

——the old system of sanction is now abolished The Court or officer concerned makes the complaint direct Where therefore complaint is made by the Sub-Inspector concerned, with the necessary administrative sanction, no judicial sanction is necessary. 1938 Sind 213.

S 196-A.

——where a non cognizable offence is committed and several persons are charged for conspiracy to commit the offence but some only are parties to the proceedings in which the offence was committed the sanction is not necessary in the case of such accused but is necessary in the case of others 1938 Lah 526

S 197.

——the object of the sec is to afford reasonable protection to the public servants in their discharge of public duties and this cannot be [illegible] he public [illegible] Pat 543, [illegible] 724 *Diss* [illegible] s entitled to the protection of sec 197 1938 Pat 543 39 Cr L J 774 1928 Cal 516 *Rel on*

——under s 197 (1) sanction is a condition indispensable to the [illegible] petent to [illegible] both at [illegible]

S 198

[illegible]

S. 200

——the mere fact that a complaint mentions wrong section or wrong Act does not prevent Court from taking cognizance of offence under right section or right Act 1938 Sind 209

S 202

——the first part of s 202 applies only to cases in which the has taken cognizance himself and does not include a transferred. The second part includes transfer made under s.

S. 202—*contd.*

not under s 528. The first Court taking evidence for complaint and issuing process his successor cannot go back and direct preliminary inquiry under s 202 1938 Nag 433, 9 M 282 *Rel. on.*

——when a M has referred a complaint to the police, for investigation under s 202, the police have power to arrest under s. 54 but cannot investigate the offence independently of M's directions and send the accused for trial upon charge sheet. 1938 Sind 113 F. B, 1933 Sind 136, *over ruled.*

S 206.

——where an accused who is being tried under s 409 I P C. applies to the Sessions Judge claiming sessions trial, the latter has no power to direct the M. to commit the accused to sessions, he can make reference to H C 1938 Cal 416.

S 215

——if the confession of one accused is the only material relied upon by the prosecution against the other accused for his committal, then a point of law would arise and the committal would have to be quashed. 1038 Mad 675.

S. 223.

——the term 'manner" includes every ingredient by which act ceases to be one of mere deception and becomes one of cheating 1938 Lah 828

S 233

——when charge is made in respect of same occurrence both of [illegible] but the [illegible] al unless [illegible] N 940 [illegible]

S. 235.

——whether offences under s 376 and 377 I P C convicted on different dates form part of the same transaction 1938 Cal 769

——the accused were jointly tried on series of charges under ss 342, 376 and 377 I P C, four charges were framed in respect of wrongful confinement, each relating to different confinements, some by all the accused and some by some of them Each charge of rape specified offence committed either on indefinite date or within particular period, held that the charges were vague and general and multiplicity of charges prejudiced the accused 1938 Cal 769

——two separate murders by same person at different places during same night and grievous hurt inflicted on third man at third place. Proper procedure is,—two separate charges under s 302 I. P. C. to be tried together and third charge under s 325 to be tried separately. 43 C. W. N 1235.

S 238.

—where a fracas is the basis of police charge-sheet charging a person under s. 353 I. P. C. for using criminal force to a public servant but the M finds that ordinary person was assaulted, he can convict the accused 1938 Rang. 281, 6 C. W. N. 202 *Diss.*

S 239.

—when a person charged with having received stolen property is sought to be tried jointly with a person who is charged with having stolen the property, it is necessary that the property alleged to have been received should constitute the proceeds of one single theft and not several thefts. 1938 Cal. 525 42 C. W. N. 729, (25 M. 61 **P. C.**, 1932 Bom 201, 1925 Cal. 248) *Rel on.*

—the term "offence" under s. 239 includes minor or alternative offences, within the meaning of s 235 (2) or 236. 1938 Sind 164, 33 B. 211 *Rel. on.*

—under cl. (c) three offences of the same kind may be tried at once but not three transactions of the same kind 1938 Sind 164, 1917 Sind 40 *Ref.* 1932 B. 277 *Rel. on*

—the clauses are exclusive in the sense that they cannot be added to one another, exclusive nature of different clauses explained 1938 Sind 164

[illegible]

mode of trial is not a mere irregularity such as can be remedied by s 537. 1938 Cal. 525 42 C W N. 729.

S. 250

—cause shown by complainant must be recorded before directing payment of compensation 1938 Rang 247, 1932 Sind 156 *Rel on.*

—once a case has been decided to be false and frivolous and [illegible] M to award compensation. The [illegible] the order except for cogent reasons

S 252.

—a M is bound to summon under s 252 (2) at the expense of Govt such of the complainant's witnesses as he considers necessary He can refuse to do so only when he considers the witnesses unnecessary and not for the fact that the case was investigated by the police and no challan was put up. 1938 Lah. 444

S. 257

[illegible]

—the expression "and is so tried" means "if he is in tried" or "if he is eventually so tried." 1938 Nag 328.

S 307

——when in a case some offences are triable by jury and some with the aid of assessors before reference under s 307 the S J must dispose of the case with regard to latter offences 1938 Mad 686, 1932 Mad 512 *Rel on*

S 309

——in a trial with assessors the Judge must deliver a judgment conforming to the provisions of sec 367 Merely stating that the Judge agrees with the opinion of the assessors is no judgment 42 C W, N 896 1938 Cal 551

S 326

——where the requ site number of assessors was not present, the Court asked another man who was present to serve as assessor he was included in the list but was not summoned trial was not illegal 1938 Pat 352 1918 Pat. 420, *Dist* 1938 Pat 60 *Rel on*

S 337

——if the manner of tender in a case follows in substance the method prescribed in s 337 the prosecution cannot thereafter ignore that sec. and proceed under s 494 Minor and immater al irregularities or variations or the adoption of a particular administrative procedure cannot affect the operation of the sec 1938 P C 266 42 C W N 1252 **P C**

——the term ' District Magistrate ' in s 337 (1) includes Additional District M empowered under s 10 (2) and pardon tendered by such Add tional Dt M without sanction of Dt M is not inval d 1938 Lah 796

——when a M tenders pardon stating that pardon has been tendered to a person to make him approved to connect the accused with the offence of murder it amounts to sufficient compliance with s 337 (1-A) 1938 Lah 796

——it is not necessarry that the acceptance of pardon tendered should be expressed in any part cular manner it is to be gathered from c rcumstances 1938 Lah 796

——it is open to a M other than the M tak ng cogn zance of the offence to record statement of the person to whom the pardon has been tendered 1938 Lah 796, 1933 Lah 321 *Rel on*

S 341

——s 341 applies only to the case of an accused wl o is deaf and dumb It cannot be construed to mean that in a case where there are [illegible] --ane is not able to under- [illegible] the proceedings of both to [illegible] o pass order with regard te [illegible] 1938 Bom 352

[illegible]

——s 342 appl es only to the prosecution case and not to witness called by the Court. So the accused need not be examined again after such witness. 1938 Lah 631

S 342—*contd*

——where in a case under s 500 I P C there is no evidence on the prosecution side to the effect that the accused had signed the petition [illegible]
prosecut [illegible]
s 342 [illegible]

witness under s 256 is not a part of the prosecution case (1923 Mad. 609 F B *Rel on*) The examination of the accused after further cross-examination of prosecution-witnesses under s 256 but before defence is not illegal 1938 Lah 543

——the examination of the accused under s 342 is one by the Judge d rect, without any intervention of the counsel The putting of one general question is not a proper compliance 1938 Nag 283

S 346

——when a case has been transferred under s 346 the Magistrate is bound to hold a *de novo* trial 1938 Cal 415

S 350

[illegible] xercis ng [illegible] should [illegible] makes note of his claim and orders the w tnesses to be examined he must be deemed to have directed *de novo* trial and failure on the part of the M in the subsequent trial to examine the witnesses in ch ef amounts to [illegible]

[illegible]

42 C W N 224

——when a succeeding M decides under s 350 (1) to recommence a trial the accused has no r ght to demand that the tr al shall not be recommenced 1938 Oudh 218 1938 O W N 841

——in order to have *de novo* trial secor d M must be different from first M who has heard and recorded the whole or any part of the evidence and who has ceased to have jurisdiction 1938 All. 536

——a contravention of provis ons of s 350 (1) (a) will vitiate the trial only when there is a refusal on the part of the M to resummon and re-hear the witness or when the evidence of w tnesses examined against the [illegible] When the prosecution [illegible] examining him in chief [illegible] it did not prejudice [illegible] Oudh 212 12 C. W.

S. 350—*contd.*

——prior to the framing of charge an accused is not entitled to have a *de novo* trial. The resummoning of witnesses is entirely left to the discretion of the M. If he does not feel it necessary to examine any witnesses afresh it is not incumbent on him to do so. 1938 Mad. 742, 1931 Mad 488, *Rel. on.*

——resummoning of the witnesses is not tantamount to recommencing the inquiry. 1938 Mad. 742.

——non-compliance with the demand that the witnesses should be resummoned and re-heard is not an irregularity which vitiates the trial and where all the witnesses were further cross-examined before the M. who decided the case the accused cannot be said to have been prejudiced by the refusal to resummon and rehear the witnesses. 1938 Mad. 724.

S. 367.

——when the Appellate Court differs from the lower Court it must write considered judgment with its conclusions and reasons and scrutiny. 1938 Cal 522 (1924 Cal. 618, 7 C. W. N. 30) *Rel. on.*

S. 368.

——th [illegible]
read over [illegible]
preceding c [illegible]
signature o [illegible]
own conver [illegible]

S. 386.

——warrant issued to Collector for realization of fine from accused's immovable property must be accepted by civil Court as decree. 1938 Pesh 40.

S. 395

——when sentence of whipping is found inexecutable, the M. has no power to take bond under s. 502. 1938 Rang. 218.

S. 397.

——the direction that the sentence of detention in Borstal School should commence after expiration of the previous one is illegal. 1938 Mad 613.

S. 403.

——it is not illegal to try an accused person for an offence under s. 44 of the Calcutta Police Act, committed in the same series of acts as those upon which he has already been tried along with certain other persons, under s. 45. 42 C. W. N. 1232.

——persons acquitted or convicted cannot subsequently be retried at all for the same offence. 1938 Mad 847.

——an accused was tried and convicted under sec. 211 I. P. C. but was acquitted on a revision. He was subsequently prosecuted on the same facts, under s. 1 [illegible]
Cr. P. C. was obtain [illegible]
exception laid down in [illegible]
1938 Lah. 625, (1930 L. [illegible]

S 403—*contd.*

143, 1915 All 114, 1926 Pat. 302, 1926 Cal. 691, 1927 Sind 10, 1927 Mad 301) *Rel on* 36 M. 308, *not fol.*

——one acquitted by Second class M under s. 323 I. P. C. cannot subsequently be retried under s. 324 I P. C 1938 Lah. 614

S 423.

——when an appellate Court holds that the evidence on the record is not sufficient to support the charge, it cannot direct retrial, directing or giving a chance to the prosecution to produce better evidence. 42 C W N. 812

——sec 423 (1) (b) does not apply to cases of acquittal, partial or total, but to cases of conviction 1938 Sind 202.

——when a M has convicted an accused person under two charges but passed no separate sentence under one, the S. J, in appeal, may, on finding the accused guilty only under that charge, award a sentence up to the limit of the sentence imposed by the M 42 C. W. N 1040.

S. 428

——where the prosecution witnesses have not been cross-examined at the trial, the witnesses not having been recalled after charge and the accused in appeal wishes the additional evidence to be brought before [illegible] the M. to record [illegible] 781, 1929 Bom [illegible]

S. [illegible]

——further inquiry means further consideration of evidence. 1938 Mad 742

S 439.

——where in a judgment of acquittal by the appellate Court the evidence has not been judicially examined and appreciated and consequently there has been failure of justice, the H C. should interfere in question of fact 1938 Cal 613 42 C W. N 25 67 Cr. L J 571, (42 C 612 19 C W N. 184, 18 C W. N 1244 33 C. W N 576, 18 C. W. N. 279 18 C. L. J. 519) *Ref*

——the bar in s 439 (4) applies to partial acquittal as well 1938 Sind 202

——the H C has no power to interfere in revision under ss 435 and 439, with an order and conviction by a Union Bench 42 C W N 1068, (59 C 1080 38 C W N 986) *Dist*

Ss 443—449.

——the previlege of Chap 33 can be waived Proceedings under this Chap cannot be cancelled and the accused, if not discharged, must be committed to Sessions 1938 Sind 150

S 476.

[illegible]

S. 476—*contd.*

1938 C ... Held ... that in such cases the High (...

false ...

that the entry was fabricated for the purpose of being used in the ... 1938 Cal. 677 ... have committed offence is

... should give fair opportunity to party against whom inquiry is made to present his case and should allow him to cross-examine witnesses who are not examined before. 1938 Rang. 297.

——an Appellate Court has power under sec 476-B to remove a case to lower Court for filing complaint 1938 Nag 487

——defamatory statements made in affidavit, not definitely constituting offence relating to administration of justice—complaint of defamation can be made under sec. 500 I. P. C. without complaint of Court 1938 Sind 129.

S 488.

——in case of joint order in favour of woman and her child, teasons depriving woman of her right do not affect the child. Maintenance cannot be allowed to be accumulated Difference between cls 4 and 5.

...

Lah 197) Approved.

——because the wife would not live in a separate house with the husband but insisted on staying on with him where they were, and the husband on his part was not willing or did not find it possible to comply ... separate, such separation would not ... Held also, that a M ... the words of the section.

...

not necessary that living in ... adulterer. When the charge ...

... what amounts to sufficient ... d strictly. 1938 Sind 223.

S 494

—the prosecution having to incur expenses is not sufficient reason for withdrawing a case when the case is strong 1938 Nag 334 39 Cr L J 458

S 498

—once the H C has passed orders in a criminal appeal it becomes *functus officio* The seisin may be revived when the Jud cial Comm ttee has granted leave to appeal and then the H C can grant application for bail 1938 Lah 697

S 499

—the provisions of sec 499 do not overr de the inherent powers of H C *in* the matter of granting the bail 1938 Nag 420

S 503

—the Court can in proper circumstances issue commission for examination of w tnesses. 1938 Pat 366

S 514

—it is sufficient if grounds of proof ex st and appear in record of proceed ngs Omission to record reasons is a matter relating to procedure and not jurisd ction 1938 Nag 275

S 517

—case under s 380 read w th s 411—accused d scharged—order of d sposal of stolen art cles was held to be under s 517 Cr P C and could be interfered w th under s 520 1938 Rang 278

S 522

—one month s time l m t does not apply to Court of appeal 1938 Nag 316

S 526

—that the M l ved in the house of tl e accused was held no ground for transfer 1938 Lah 569

—the mere fact that tl e Judge or Mag strate is Hindu or Mahammedan does not debar l m from hear ng a case but when the quest on of communal sm is very prom nent it is des rable that the case should be transferred 1938 Lah 706

S 528

—the M has no power to award costs in appl cation under s 528 1938 Mad 509

S 529

—ss 529 and 530 do not apply to v llage panchayet 1938 Oudh 183

S 537

—irregularity in complaint made by one Court to anol curable under sub sec (a) 1938 Nag 487

S. 476—*contd.*

1938 C ... High ...

false ...

that the entry was fabricated for the purpose of being used in the ... 1938 Cal 677 ... have committed offence is.

—... the M. should give fair opportunity to party against whom inquiry is made to present his case and should allow him to cross-examine witnesses who are not examined before. 1938 Rang. 297.

——an Appellate Court has power under sec 476-B to remove a case to lower Court for filing complaint. 1938 Nag. 487.

...

1938 Sind 129

S 488.

——in case of joint order in favour of woman and her child, reasons depriving woman of her right do not affect the child. Maintenance cannot be allowed to be accumulated Difference between cls 4 and 5 explained 1938 Sind 151

——in case of an application for maintenance by wife for herself and for her child Rs 100, can be directed to be paid to each separately. 1938 Mad. 721.

... the Court can ...

Lah. 197) Approved.

——*because the wife would not live in a separate house with the* husband but insisted on staying on with him where they were, and the ... possible to comply ... ation would not ... d also, that a M ... ds of the section.

... us conduct, it is ... the house of the ... put forward, the ... evidence. 1938

... nts to sufficient residence—Rules should not be construed strictly. 1938 Sind 223-(1930 Bom 348, 1927 All. 291) *Rel. on.*

S 494

—the prosecution having to incur expenses is not sufficient reason for withdrawing a case when the case is strong 1938 Nag 334 39 Cr L J 458

S 498

—once the H C has passed orders in a criminal appeal it becomes *functus officio* The seisin may be revived when the Judicial Committee has granted leave to appeal and then the H C can grant appl cation for bail 1938 Lah 697

S 499

—the provisions of sec 499 do not override the inherent powers of H C in the matter of granting the bail 1938 Nag 420

S 503

—the Court can in proper circumstances issue commission for examination of witnesses. 1938 Pat. 366

S 514

—it is sufficient if grounds of proof exist and appear in record of proceedings Omission to record reasons is a matter relating to procedure and not jurisdiction 1938 Nag 275

S 517

—case under s 380 read with s 411—accused discharged—order of disposal of stolen articles was held to be under s 517 Cr P C and could be interfered with under s 520 1938 Rang 278

S 522

—one month s time l mit does not apply to Court of appeal 1938 Nag 316

S 526

—that the M l ved in the house of tl e accused was held no ground for transfer 1938 Lah 569

—the mere fact that tl e Judge or Magistrate is Hindu or Mahammedan does not debar h m from hearing a case but when the question of communal sm is very prominent it is desirable that the case should be transferred 1938 Lah 706

S 528

—the M. has no power to award costs in application under s 528 1938 Mad 509

S 529

—ss 529 and 530 do not apply to village panchayet 1938 Oudh 183

S 537

—irregular ty in complaint made by one Court to curable under sub sec (a) 1938 Nag 487

S. 539-B.

——failure to make inspection-note is not fatal. 1938 Nag. 325 39 Cr. L J 427, 1938 Oudh 182.

S 544

——Rule framed by Lahore H. C. that ordinarily expenses of defence witnesses are to be paid by Govt in every warrant cases is *ultra vires.* 1938 Lah. 693.

S 561-A

——remarks wholly unsupported by evidence on record and wholly unjustified and likely to affect future of applicant should be directed to be expunged. 1938 Lah 793.

S 562.

——this sec. applies to offences punishable only with fine 1938 Oudh 233

CRIMINAL TRIAL

Duty of prosecution.

——the prosecution is not bound to call all witnesses. But it is *open to the jurors to draw adverse inferences from non-examination of* witnesses 1938 Cal. 625.

Trial by jury—misdirection.

— [illegible] matters of deta l does not amount to [illegible] ury is coloured [illegible] is not fair to [illegible] Legal terms [illegible] eving evidence given at the end of charge is not misdirection. 1938 Cal 658

——absence of caution usually given to jury in sexual cases cannot be said to have affected the verdict *of the jury.* 1938 Cal 658.

Conspiracy to commit defalcation—proper charge.

——to split up the case into a number of cases, each embracing a charge of a particular defalcation and conspiracy to commit the same, is most unfair and harassing. 43 C. W. N. 23

Trial when some offences require sanction and others not.

——when several offences are committed in the course of same *transaction, some* requiring sanction and others not the *accused can be* tried for those offences that do not require sanction before obtaining sanction for other offences. 1938 Pat. 548

Poverty of witness.

——many a man is poor because he is honest and it is no ground for discrediting his evidence 1938 Lah. 534 **F. B.**

INDIAN PENAL CODE

S. 28

——where accused counterfeited some coins and introduced them into another's house with the sole object that the other person should be thought as counterfeiter, the accused person cannot be said to counterfeit. 1938 Nag 444 1937 Mad 711 *Rel on*

S 34

——where the common intention of the accused is only to abuse opposite party, and a fight ensues on mutual exchange of abuse and a death is caused during fight, the common intention cannot be said to be one to commit murder. 1938 Lah 747.

S 99

——there can be no right of private defence where the riot is premeditated on both sides, unless object of assembly is shown to have been to repel forcible and criminal aggression 1938 Pat 518, *case laws discussed.*

S. 108-A

——abetting the performance of child marriage outside British India is not abetment within s. 108-A. 1938 Nag. 235

S 109

——where a person aids and abets the perpetration of a crime at the very time the crime is committed, he is a principal of the second degree and s 109 applies 1938 Cal 625

S 124-A.

——when the article amounts in essence to nothing more than a censure expressed in exaggerated inflated and intemperate language, on a draft bill sponsored by a Ministry, it is not seduction 1938 Cal. 721 42 C. W. N 1150.

S 147.

——if there is an assembly of five or more persons with common object of resisting the process of law every member is guilty under s 147 whether resistance is offered or not but if force is used. If actual resistance is offered it comes under s 186 But both the offences cannot be committed in course of one transtaction. 1938 Pat. 548

S 159

——to constitute an affray there must be a fight. The offence of affray cannot be established where the members of one party beat the members of another party and the latter remain passive. 1938 Mad 924

S 186.

——defiance of process of law is a serious offence and hence the sentence should not be lenient. 1938 Pat. 548.

S 204.

——mere refusal to produce document is an offence under s. 204 but refusal coupled with secret dealing with document or with dealing intended to be kept secret amounts to an offence under s. 204. 1938 Sind 217.

S 211.

——the words 'be instituted' in second part denote passive mood 1938 Sind 213

S 212

——requirements of sec. 212 1938 Pat. 358

S 218

——what is essential is making of entries with intention to cause loss or injury and not whether the accused will be able to accomplish that object. 1938 Mad 595.

S 225-B

——escape from arrest is an offence under s 225-B even in the absence of mentioning the time of authorisation under High Court's order, by the Dt Munsiff to the Head clerk to sign the warrant. 1938 Mad 536

S 302

——where the accused with the intention of getting rid of her husband administered fatal dose of *dhatura* in his food, she is guilty of murder in the absence of explanation creating doubt 1938 Nag 318.

——where the accused's wife of loose character gave birth to a child begotton through another man while in father's house and the ... fellow-villagers, ... 556 ... an ... ent to ...

S 307.

——shooting blindly in the dark in the direction of sound heard in distance constitutes an offence under s 337 and not under s 307 1938 Rang 210

S 361.

——the exception to s 361 simply is that the sec. does not extend to the act of any person who in good faith believes himself or herself to be entitled to the lawful custody of the child There is no question whatever of any authority to renounce the girl from the control of her ...

S 366

——where accused is charged under ss. 366 and 376 it is open to the jury to convict the accused under s 366 and acquit them under s 376 1938 Cal 460.

S 366—*contd.*

——where charge is under s. 366 against two persons, evidence of each accused must be examined and if offence against one is not proved proper direction to jury is that it is bound to acquit and not convict him in the alternative s. 366-A. 1938 Cal. 475

S 376

——rape cannot be inferred from mere existence of injury to vagina 1938 Rang. 298.

S. 379

——accused's pointing out the place where stolen property is concealed does not give rise to a presumption under s. 114 Evi. Act or justify his conviction under s 411 I. P. C. still less for the offence of theft. 1938 Bom 463, 1930 Bom 244 *fol.*

S. 397

——robbers exhibiting dangerous weapons in such manner as to intimidate persons robbed and to facilitate robbery is punishable under s 397 even if blows were not actually inflicted. 1938. Mad. 477.

S 403.

——withdrawal by an employee of the amount deposited by him as a security during his appointment without the permission of the employer and before adjustment of accounts, amounts to criminal misappropriation. 1938 Cal. 451 42 C. W N. 618, 1936 Cal 520 38 Cr. L. J. 56 *Dist*

——proof of reciept and failure to account is naturally a long way towards proof of misappropriation, but proof of conversion to use is necessary. 1938 Lah 634, (1928 Lah. 382, 1934 Cal. 425, 1934 Sind 22) *Rel. on.*

S 405.

——sub-pledge by pledge of goods pawned to him to the extent of his interest therein is not criminal breach of trust. 1938 Mad 551.

S. 417.

——whatever offer
cover is sent though
s 417 is not committed.
215, 1924 All. 205) *Rel*

S 421.

——shopkeeper with stock of goods obtained on credit selling g without making payment to his creditor is not guilty under s. 421. Rang. 242.

S 424

——if a person knowing the attachment of his crops in executio[illegible] removes them he is guilty under s 424 1938 All. 449

S 426.

——where a person obstructs a right of water course he commits a[illegible] act of trespass and if the person whose right is obstructed destroys th[illegible] obstruction the wrong that may be caused thereby is not wrongful los[illegible] within s 426 1938 Pat 538, 1915 Mad 73 *Rel on*

S 441.

[illegible] e to have intercourse wit[illegible] [illegible] does not fall under sec [illegible] [illegible] ·ilthily through the court [illegible] itting adultery in anothe[illegible] [illegible] espect of former house no[illegible] [illegible] er first alternative. 193[illegible] Lah 514 **F B.**

S 471.

——where the accused when required to file an affidavit of docu ments in his possession mentioned in it a certain document but did no[illegible] [illegible] party in cross-examination aske[illegible] [illegible] it was produced and found to b[illegible] [illegible] guilty under s 471 1938 Rang [illegible] *Rel on*

S. 478

——no mark can be a trade-mark unless it is "distinctive" [illegible]

[illegible]

——a marriage will not be valid unless gone through a form[illegible] recognised or known to law. 1938 Sind 127.

S 498.

——where a married woman is found living in the accused's hous[illegible] for some time and sexual intercourse takes place, "detention" is proved 1938 Pat 432.

S 499

——where a person is charged with something and acquitted afte[illegible] trial, the man who repeats the charge has to be on very sure ground if he wishes to plead that he repeats this charge in good faith 1938 Rang 232

S. 500.

——a complaint under s 500 cannot be dismissed even if the same facts constitute also an offence under s. 182 and sanction required by s 195 Cr. P C. is not obtained 1938 Rang. 232, **F B** (37 C. 604, 1921 C. 1) *Approved* 1935 Rang 163, *overruled* Similar case. 1938 Cal 527, 1921 Cal. 1 **F B** *Rel. on*, 1917 Cal 704, 111 I. C 433 *Dist.*

THE END

APPENDIX.

CONTEMPT.

——when injunction is against B, A abetting B in disobeying it, [illegible] disobedience and is liable for [illegible] against which injunction [illegible] when third person who [illegible] nor the latter is guilty. 1938 P. C 295, P C 1937 Pat 65 Sp B *reversed*

——when a criminal proceeding is launched by a zemindar against his raiyats and certa[illegible] person issues pamphlets accusing zemindar of launching false cases contempt is of grave nature 1838 Mad 975.

CR P C

S 1 (2)

——the provisions of this Code apply in case of complaint against village police officer 1938 Bom 489 40 Bom L R 1106

S 107

——on a petition under s 107 the M can ask the police to make preliminary inquiry and submit report 1938 Lah 861.

Ss 133, 139 A

——the M is not required to decide question of title but is only to satisfy himself if there is *prima facie* evidence in support of denial 1938 All 653

S 144

——s 144 does not authorise the M to pass mandatory order, he can pass restrictive order 1938 Pat 610

——an order made against a party called upon to show cause cannot be altered into one against other party not so called upon and can be interfered in revision though spent 19 Pat L T 796

S 164

——Cr P C Amending Act XVIII of 1923 need not be applied to confession in Gwalior State The confession of an accused recorded in that State under s 79 Cr P C, in force there can be used in British India under s 80 I v Act 1938 All 625

S 177.

——the fact that the locality in which the offence was committed is transferred to another district after the cognizance of the offence does not oust the jurisdiction I L R (1938) 2 Cal 357.

S 396.

——as a general rule, a sentence of death should not necessarily follow a conviction under s 396 when death is caused and this sec. differs from s 302 in this respect 1938 All. 625

S 442

——the creation of an awning did not constitute the structure in question a building 1938 Oudh 263

S 448.

——when a person enters another's house in his absence in assertion of his own right, intention to annoy can be presumed 1938 Lah 848
